TITLE 38

CHAPTER 2

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUBCHAPTER I

ORGANIZATION AND POWERS

38 § 341-A. Department of Environmental Protection

There is established a Department of Environmental Protection, in this Title called the "department."

1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

2. Composition. The department shall consist of the Board of Environmental Protection, in the laws administered by the department called "board," and of a Commissioner of Environmental Protection, in the laws administered by the department called "commissioner."

3. Commissioner. The commissioner is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

A. The commissioner serves at the pleasure of the Governor.

B. When the State receives authority to issue permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as commissioner who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

C. The commissioner may delegate duties assigned to the commissioner under this Title to staff of the department

4. Licenses and permits. For purposes of this Title, licenses or permits issued by the department may be issued by either the commissioner or the board subject to the provisions of section 341-D, subsection 2.

38 § 341-B. Purpose of the board

The purpose of the Board of Environmental Protection is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating

to environmental protection and to provide for credible, fair and responsible public participation in department decisions. The board shall fulfill its purpose through rulemaking, decisions on selected permit applications, review of the commissioner's licensing and enforcement actions and recommending changes in the law to the Legislature.

38 § 341-C. Board membership

Membership of the Board of Environmental Protection is governed by this section.

1. Appointments. The board consists of 10 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

2. Qualifications and requirements. Members of the board must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of this Title and all other laws the board is charged with administering. At least 4 members must be residents of the First Congressional District and at least 4 members must be residents of the Second Congressional District. The boundaries of the congressional districts are defined in Title 21-A, chapter 15. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the board. If a county or municipality is a participant in an adjudicatory proceeding before the board, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

3. Terms. The members must be appointed for staggered 4-year terms, except that a vacancy must be filled for the unexpired portion of the term. A member may not serve more than 2 consecutive 4-year terms.

4. Chair. The Governor shall appoint one member to serve as chair.

5. Expired terms. Any member who has not been renominated by the Governor within 90 days of the expiration of that member's term may not continue to serve on the board unless the Governor notifies the Legislature, in writing and within 90 days of the expiration of that member's term, that extension of the member's term is required to ensure fair consideration of specific major applications pending before the board. That member's term terminates upon final board actions on the specific applications identified in the Governor's communication.

6. Compensation. Members are entitled to compensation according to the provisions of Title 5, section 12004-D.

7. Conflict of interest. Members are governed by the conflict of interest provisions of Title 5, section 18.

8. Federal Water Pollution Control Act requirements. When the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251 et seq., as amended, a person may not serve as a board member who receives, or during the 2 years prior to appointment has received, a significant portion of income directly or indirectly from license or permit holders or applicants for a license or permit under the Federal Water Pollution Control Act. For the purposes of this section, "a significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more if the recipient is over 60 years of age and is receiving that portion under retirement, pension or similar arrangement.

38 § 341-D. Board responsibilities and duties

The board is charged with the following duties and responsibilities.

1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal reasonable rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists.

During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall identify provisions of the proposed rule that the department believes would impose a regulatory burden more stringent than the burden imposed by the federal standard, if such a federal standard exists, and shall explain in a separate section of the basis statement the justification for the difference between the agency rule and the federal standard.

This subsection takes effect January 1, 1998.

2. Permit and license applications. The board shall decide each application for approval of permits and licenses that in its judgment:

A. Involves a policy, rule or law that the board has not previously interpreted;

B. Involves important policy questions that the board has not resolved;

C. Involves important policy questions or interpretations of a rule or law that require reexamination; or

D. Have generated substantial public interest.

The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A, when it finds that the criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that one or more of the criteria in this subsection have been met.

Any interested party may request the board to assume jurisdiction of an application.

3. Modification, revocation or suspension. After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may modify in whole or in part any license, or may issue an order prescribing necessary corrective action, or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license, whenever the board finds that:

A. The licensee has violated any condition of the license;

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts;

C. The licensed discharge or activity poses a threat to human health or the environment;

D. The license fails to include any standard or limitation legally required on the date of issuance;

E. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license;

F. The licensee has violated any law administered by the department;

G. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990.

For the purposes of this subsection, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend or reverse any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or

(2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board;

B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. The procedures for review are the same as provided under paragraph A; and

C. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A.

5. Requests for reconsideration. A person aggrieved by a decision of the board on a permit or license application may petition the board once to reconsider that decision, except that a person may not petition the board to reconsider a decision that is an appeal or review of a final license or permit decision made by the commissioner under subsection 4, paragraph A. A petition for reconsideration must be made in writing within 30 days after the board's decision and may be made for:

A. Correction of any part of the decision that the petitioner believes to be in error and not intended by the board;

B. An opportunity to present new or additional evidence to secure reconsideration of any part of the decision; or

C. A challenge to any fact of which official notice was taken.

The petition must set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of any new or additional evidence to be offered and the nature of the relief requested. Within 30 days of receiving a complete reconsideration petition, the board shall decide whether to reconsider its decision. The board may hold a hearing within 30 days of its decision to reconsider the decision.

In considering the petition, the board may grant the petition in full or in part, or dismiss the petition. The board shall provide reasonable notice to interested persons.

The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that an interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time or the evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The running of the time for appeal under section 346, subsection 1, is terminated by a timely petition for reconsideration filed under this subsection. The full time for appeal commences and is computed from the date of the final board action dismissing the petition or another final board action as a result of the petition.

The filing of a petition for reconsideration is not an administrative or judicial prerequisite for the filing of an appeal under section 346, subsection 1.

6. Enforcement. The board shall:

A. Advise the commissioner on enforcement priorities and activities;

B. Advise the commissioner on the adequacy of penalties and enforcement activities;

C. Approve administrative consent agreements pursuant to section 347-A, subsection 1; and

D. Hear appeals of emergency orders pursuant to section 347-A, subsection 3.

7. Reports to the Legislature. The board shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters by January 15th of the first regular session of each Legislature on the effectiveness of the environmental laws of the State and any recommendations for amending those laws or the laws governing the board.

8. Other duties. The board shall carry out other duties as required by law.

38 § 341-E. Board meetings

Board meetings held under section 341-D, subsections 1 to 7, are governed by the following provisions.

1. Quorum. Six members of the board constitute a quorum for a vote of the board, 6 members constitute a quorum for rule-making hearings held by the board and 3 members constitute a quorum for other hearings held by the board.

2. Proceedings recorded. All proceedings before the board must be recorded electronically.

38 § 341-F. Administration

Responsibility for the administration of the board lies with the chair.

1. Staff. Staff of the board must be hired by the chair with the consent of the board. The executive director shall direct the daily operations of the board staff.

2. Unclassified employees. Professional staff of the board are unclassified and may be removed, only for cause, by the chair with consent of the board.

3. Conflict of interest. Notwithstanding Title 5, section 18, subsection 1, each professional staff member of the board is an "executive employee" solely for the purposes of Title 5, section 18.

4. Budget. The board shall prepare and adopt a biennial operating budget to be submitted to the commissioner for inclusion in the department's budget.

5. Consultants. The board may obtain the services of consultants on a contractual basis or otherwise as necessary to carry out the responsibilities under this Title.

6. Cooperation with other agencies. The board may cooperate with other state or federal departments or agencies to carry out the responsibilities under this Title.

38 § 341-G. Board of Environmental Protection Fund

There is established the Board of Environmental Protection Fund to be used by the board as a nonlapsing fund to carry out its duties under this Title. Notwithstanding any other provision of law, the funds identified in subsection 1 shall transfer annually to the Board of Environmental Protection Fund an amount not to exceed $250,000. Money in the Board of Environmental Protection Fund may only be expended in accordance with allocations approved by the Legislature.

1. Transfer funds. The amount transferred from each fund must be proportional to that fund's contribution to the total special revenues received by the department under chapter 2, subchapter 2; sections 551, 569-A and 569-B; and chapter 13, subchapter 4. Any funds received by the board from the General Fund must be credited towards the amount owed by the Maine Environmental Protection Fund, chapter 2, subchapter 2.

2. Investment of funds. Money in the Board of Environmental Protection Fund not currently needed to meet the obligations of the board in the exercise of its responsibilities under this Title must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund.

38 § 342. Commissioner, duties

The Commissioner of Environmental Protection shall have the following duties:

Revision Note: 1st paragraph, "shall have" should be "has" and change ":" to "."

1-A. Administration of department. The commissioner is the chief administrative officer of the department and responsible for all administrative matters of the department, except as otherwise specified. The commissioner shall assure that all determinations made by the staff of the department are promptly rendered. The commissioner shall resolve disputes between department staff and applicants with respect to any questions regarding requirements, interpretation or application of the laws, rules or department policy. In resolving disputes, the commissioner shall attempt to reach a fair and appropriate result given all of the

circumstances of the issue and may utilize the services of such consultants or experts as the commissioner determines would be helpful to resolve any disputed issue. For purposes of this subsection and section 341-A, subsection 3, paragraph C, staff of the department does not include staff of the board.

2. Employment of personnel. The commissioner may employ, subject to the Civil Service Law, personnel for the department and prescribe the duties of these employees, except persons occupying the positions defined in Title 5, section 938, subsection 1-A, as the commissioner determines necessary to fulfill the duties of the department. For purposes of this subsection, personnel for the department does not include staff of the board.

3-A. Negotiating agreements. The commissioner may negotiate and enter into agreements with federal, state and municipal agencies.

4. Organization of department. The commissioner, after consultation with the Board of Environmental Protection, shall organize the department into the bureaus, divisions, regional offices and other administrative units necessary to fulfill the duties of the department. After consultation with the board, the commissioner shall prescribe the functions of the bureaus and other administrative units to insure that the powers and duties of the department are administered efficiently so that all license applications and other business of the department may be expeditiously completed in the public interest.

A. In coordination with the Health and Environmental Testing Laboratory in the Department of Human Services, the commissioner shall ensure that sampling, data handling and analytical procedures are carried out in accordance with the highest professional standards so that data generated for departmental programs are of known and predictable precision and accuracy.

B. The Office of Pollution Prevention is established within the department to review department programs and make recommendations to the commissioner on means of integrating pollution prevention into department programs. The Office of Pollution Prevention has the following functions:

(1) To establish pollution prevention priorities within the department;

(2) To coordinate department pollution prevention activities with those of other agencies and entities;

(3) To ensure that rules, programs and activities of the department are consistent with pollution prevention goals and do not hinder pollution prevention initiatives;

(4) To provide technical assistance, training and educational activities to assist the general public, governmental entities and the regulated community with development and implementation of pollution prevention programs as funds allow;

(5) To establish an award program to recognize businesses, local governments, department staff and others that have implemented outstanding or innovative pollution prevention programs, activities or methods;

(6) To identify opportunities to use the state procurement system to encourage pollution prevention;

(7) To develop procedures to determine the effectiveness of the department's pollution prevention programs and activities;

(8) To assume responsibility for the administration and implementation of chapter 26; and

(9) To administer and evaluate the Technical and Environmental Assistance Program established in section 343-B.

The commissioner shall designate an employee of the department to manage the functions of the Office of Pollution Prevention. That person may provide independent testimony to the Legislature, may make periodic reports to the administrator of the federal Environmental Protection Agency for transmittal to the United States Congress and may address problems or concerns related to the functions of the office, including the investigation of complaints concerning the Technical and Environmental Assistance Program.

The commissioner shall identify a staff person or persons in each bureau of the department whose primary responsibility is to provide guidance to any party through the permit review process.

5-A. Designation of deputy commissioner and directors. The commissioner may employ, to serve at his pleasure, the following:

A. A deputy commissioner;

C. Directors as defined in Title 5, section 938, subsection 1-A. [

7. Representation in court. The commissioner may authorize certified employees of the department to serve civil process and represent the department in District Court in the prosecution of violations of those laws enforced by the department and set forth in Title 4, section 152, subsection 6. Certification of these employees must be provided as under Title 30-A, section 4453.

8. Data base. The commissioner shall develop by January 1, 1991, and maintain a data base of license applications received and decisions made by the department. The data base must include information on all applications pending or received after January 1, 1990. For each application the data base must include:

A. The type of license sought;

B. The name and address of the applicant and the name of a natural person who is the representative of the applicant;

C. The location of the project;

D. The date of acceptance of the application for processing;

E. The current processing status of the application;

F. An indication of whether the commissioner or the board will decide the application;

G. A brief description of the project, including any substantial issues raised during the licensing process; and

H. A brief description of the final action taken by the department, either by the commissioner or the board, on the application.

The commissioner shall maintain a central archive of all applications received and licenses issued by the department.

9. Rules. The commissioner may submit to the board new or amended rules for its adoption.

10. Consultants. The commissioner may contract with or otherwise employ consultants for services necessary to carry out duties under this Title.

11. Administrative duties for the board. The commissioner shall meet the administrative requirements of the board including bookkeeping, expense reimbursement and payroll matters.

12. Coordination and assistance procedures. The commissioner shall establish procedures to assist the public and applicants and coordinate processing for all environmental permits issued by the department. These procedures must, to the extent practicable, ensure:

A. Availability to the public of necessary information concerning these environmental permits;

B. Assistance to applicants in obtaining environmental permits from the department; and

C. That the public understands the permitting process and all the procedures of the department including those of the board. Any written material must be in clear, concise language.

13. Agricultural impacts. The commissioner shall notify and regularly inform the Commissioner of Agriculture, Food and Rural Resources on proposed legislation or rules that may affect agricultural activity.

14. Environmental priorities report. Contingent upon available funding, the commissioner shall conduct a study of the State's environmental priorities and shall report annually to the Governor and the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters on the findings and implementation strategy for the study. The commissioner shall include agencies of government as well as the public in conducting this study. The study must evaluate the risks posed by different environmental problems based on their threat to the public health and the environment, recommend environmental priorities and recommend strategies for reducing the risks associated with each priority.

15. Technical services. The commissioner shall establish a technical services unit within the department to assist any person involved in a real estate transaction in determining whether real property that is the subject of the transaction has been the site of a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products.

The commissioner may also assist in or supervise the development and implementation of reasonable and necessary response actions. Assistance may include review of agency records and files, review and approval of a requester's investigation plans, site assessments and reports, voluntary response action plans and implementation of those plans.

The person requesting assistance under this subsection shall pay the department an initial nonrefundable fee of up to $500 to be determined by the Commissioner. The person shall also pay the department for its actual direct and indirect costs of providing assistance, which

must be determined by the commissioner but which must not on an hourly basis exceed $50 per hour per person. Money received by the department for assistance under this subsection must be deposited in the Uncontrolled Sites Fund.

16. Receipt of funds. Through the Department of Administrative and Financial Services, the commissioner may establish accounts as necessary for the administration of funds held temporarily by the department and restricted to specific purposes by court order or otherwise, such as escrow funds, funds from court decrees and intervenor fees. The State Budget Officer may provide for allotment of the funds as requested. Funds received must be deposited with the Treasurer of State to the credit of the appropriate account and be invested, as provided by law, with interest credited to the account.

38 § 342-B. Liability of fiduciaries and lenders

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. The following must be considered in determining whether a secured lender is "acting diligently to sell or otherwise divest" or as "evidence of diligent efforts to sell or divest:"

(1) Use of the property during the period;

(2) Market conditions;

(3) Marketability of the site; or

(4) Legal constraints on the sale or divestment.

If the lender holds the property for longer than the 5-year period but meets the conditions in subsection 4, paragraph C, subparagraph (4) and the requirements enumerated in this paragraph, then liability is not imposed on the lender.

B. "Assets of the estate or trust" means assets of the estate or trust of which the site is a part; assets that subsequent to knowledge of the release are placed by the fiduciary or the grantor in an estate or trust over which the fiduciary has control if the grantor is or was an owner or operator of the release site at the time of the transfer; and assets that are transferred by the fiduciary upon or subsequent to knowledge of the release for less than full and fair consideration, to the extent of the amount that the fair market value exceeded the consideration received by the estate or trust.

C. "Participates in management" means, while the borrower is in possession of the facility, executing decision-making control over the borrower's management of oil or hazardous materials or exercising control over substantially all of the operational aspects of the borrower's enterprise, but does not include the following:

(1) Conducting or requiring site assessments of the property;

(2) Engaging in periodic or regular monitoring of the business;

(3) Financing conditioned on compliance with environmental laws;

(4) Providing general business or financial advice, excluding management of hazardous materials and oil;

(5) Providing general advice with respect to site management;

(6) Policing the security interest or loan;

(7) Engaging in work-out activities prior to foreclosure; or

(8) Participating in foreclosure proceedings

2. Exemption from liability. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings, liable or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367; and 1371 for discharges, releases or threats of releases of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant or a petroleum product or by-product if that person is:

A. A fiduciary, as defined in section 1362, subsection 1-D, but that exclusion does not apply to an estate or trust of which the site is a part; or

B. A lender, as defined in section 1362, subsection 1-B, who, without participating in management of a site, holds indicia of ownership primarily to protect a security interest in the site.

3. Exclusion from exemption for fiduciaries. The exemption from liability provided by subsection 2 does not apply if:

A. The fiduciary causes, contributes to or exacerbates the discharge, release or threat of release; or

B. After acquiring title to or commencing control or management of the site, the fiduciary does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the site to the department and its authorized representatives so that necessary response actions may be conducted; and

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment.

4. Exclusion from exemption for lenders. The exemption from liability for lenders provided in subsection 2 does not apply if:

A. The secured lender causes, contributes to or exacerbates the discharge, release or threat of release;

B. The secured lender participates in management of the site prior to acquiring ownership of the site; or

C. After acquiring ownership of the site and upon obtaining knowledge of a release or threat of release, the secured lender does not:

(1) Notify the department within a reasonable time after obtaining knowledge of a release or threat of release;

(2) Provide reasonable access to the department and its authorized representatives so that necessary response actions may be conducted;

(3) Undertake reasonable steps to control access and prevent imminent threats to public health and the environment; and

(4) Act diligently to sell or otherwise divest the property within a limited time period of up to 5 years from the earlier of the lender's possession or ownership. There is a rebuttable presumption that the 2nd lender is acting diligently to sell or otherwise divest the property during the first 18 months after taking possession. The secured lender must demonstrate by a preponderance of the evidence diligent efforts to sell or divest the property during the next 42 months.

When a lender has ownership or possession of a site pursuant to a security interest in the site, the term "owner" or "operator" means a person who owned or operated the site immediately prior to that secured lender obtaining ownership or possession of the site.

5. Relationship to ground water fund claims. The exemption provided in subsection 2, paragraph B from liability under section 570 does not exempt lenders who apply to the Ground Water Oil Clean-up Fund for coverage pursuant to section 568-A from the obligation to pay the full amount of deductible determined by the commissioner.

6. Exempt person as party. Notwithstanding the exemption from liability provided by this section, a fiduciary may be named as a party in an administrative enforcement proceeding or civil action brought by the State pursuant to this Title for purposes of requiring the submission of information or documents relating to an uncontrolled hazardous substance site, for purposes of proceeding against the assets of the estate or trust for reimbursement, fines or penalties or for purposes of compelling the expenditure of assets of the estate or trust by the fiduciary to abate, clean up or mitigate threats or hazards posed by a discharge or release, or to comply with state environmental laws and regulations or the terms of a department order of enforcement proceeding. This subsection does not require the fiduciary to expend its own funds or to make the fiduciary personally liable for compliance pursuant to an order or enforcement proceeding except as provided in section 568, subsection 4, paragraph B or section 1365, subsection 6.

38 § 343-B. Preapplication and presubmission meetings

At the request of a potential applicant or when required by rule, the department shall hold a preapplication meeting to identify the issues, types of information and documentation necessary for the department to properly assess a specific project. For any application that has had a preapplication meeting, the department shall also hold a presubmission meeting to review the application prior to the application being filed by the applicant.

The board may adopt rules that identify classes of applications that require an applicant to attend a preapplication and presubmission meeting held by the department prior to submitting the application.

38 § 343-C. Technical and Environmental Assistance Program

The Technical and Environmental Assistance Program, referred to in this section as the "program," is administered by the Office of Pollution Prevention. Participation in the program by any person is voluntary. The department may not require any person to participate in the program.

1. Program components. The program must:

A. Provide for the development, collection and coordination of information concerning compliance methods and technologies;

B. Provide for the encouragement of lawful cooperation among persons engaged in activities regulated by the department;

C. Provide assistance with pollution prevention and accidental release detection and prevention;

D. Ensure that a person engaging in an activity that is subject to regulation by the department is informed of that person's rights and obligations under environmental programs administered by the department, and assist persons in determining the applicable permitting and programmatic requirements of the department; and

E. Develop procedures to consider requests from regulated persons to modify work practice or technological compliance methods or the milestones for implementing those methods.

Any instance of noncompliance identified as a result of a person requesting assistance through the program must be corrected by that person. The commissioner is not required to initiate a formal enforcement action against a person found to be in noncompliance as a result of a request for assistance through the program. The commissioner, in cooperation with the Attorney General and in conformity with federal requirements, shall develop a written enforcement policy for responding to violations identified as a result of a small business requesting assistance through the program. The policy must outline conditions under which the department will forego civil penalties when the violation is not a recurrence of a violation for which a prior formal or informal enforcement response has been taken, the violation was inadvertent and did not result in significant environmental harm or risk to human health and the business acts promptly and responsibly to correct the violation.

2. Other duties. In administering the program, the Office of Pollution Prevention shall:

A. Operate a telephone hotline to enhance accessibility of the program;

B. Prepare reports periodically on the status of the program for distribution to the public, the Legislature and other appropriate federal and state agencies; and

C. Periodically review the program with trade associations, municipal organizations and regulated persons.

3. Staffing. The commissioner shall establish adequate staffing to effectively carry out the duties of the Technical and Environmental Assistance Program.

38 § 343-D. Pollution Prevention Advisory Committee

The Pollution Prevention Advisory Committee, established by Title 5, section 12004-I, subsection 22-B and referred to in this section as the "committee," serves as a review body to assess the progress in the reduction of toxics use, toxics release and hazardous waste and implementation of the provisions of chapter 26, the Office of Pollution Prevention and the Technical and Environmental Assistance Program and may render advisory opinions to the commissioner on the effectiveness of each.

1. Appointment; composition. The committee consists of 16 voting members.

A. The Governor shall appoint 2 representatives from the business community, 2 elected or appointed municipal officials who are not owners or representatives of owners of small business stationary sources, and 2 representatives of organized labor.

B. The President of the Senate shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

C. The Speaker of the House of Representatives shall appoint one member from a public health organization, one member from an environmental organization and one public member who is an owner or represents an owner of a small business stationary source.

D. The commissioner shall appoint a designee to represent the department.

E. The Senate Minority Leader and the House Minority Leader shall each appoint one member who is an owner or represents an owner of a small business stationary source.

F. The Director of the Bureau of Air Quality Control shall appoint a designee to represent the bureau.

The Commissioner of Labor and the Director of the Maine Emergency Management Agency serve as ex officio members and do not vote on committee matters.

As used in this subsection, unless the context otherwise indicates, a "small business stationary source" means a source that meets the eligibility requirements of 42 United States Code Annotated, Section 7661f.

2. Terms. Except for the commissioner, who shall serve a term coincident with that person's appointment as the commissioner, all members are appointed for staggered terms of 3 years. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2, 3-year terms.

3. Compensation. Members are entitled to compensation for expenses according to Title 5, section 12004-I, subsection 22-B.

4. Quorum; actions. A quorum is a majority of the voting members of the committee. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

5. Chair. The Governor shall appoint one member to serve as chair.

6. Meetings. The committee shall meet at least 4 times per year and at any time at the call of the chair or upon written request to the chair by 4 of the voting members.

7. Staff support. The commissioner shall provide the committee with staff support.

8. Duties; powers. The committee may review and may render advisory opinions to the commissioner on the operation and effectiveness of the following programs:

A. Toxics Use, Toxics Release and Hazardous Waste Reduction Program, established in chapter 26. The committee may:

(1) Review program priorities for toxics use, toxics release and hazardous waste reduction and may identify user groups as priorities for department technical assistance activities;

(2) Review the criteria for the submission of toxics use, toxics release and hazardous waste reduction plans;

(3) Study and evaluate the practicability of achieving reductions in the use or release of specific substances through the use of substitutes, alternate procedures or processes or other means of achieving toxics use, toxics release and hazardous waste reduction;

(4) Recommend revisions to the department, if appropriate, to toxics use, toxics release and hazardous waste reduction goals and to the Toxics Use, Toxics Release and Hazardous Waste Reduction Program; and

(5) Evaluate existing programs related to chemical production and use, hazardous waste generation, industrial hygiene, worker safety and public exposure to toxics and toxics releases and recommend coordination of information and program changes or development;

B. The Technical and Environmental Assistance Program established under section 343-B. In reviewing that program, the committee may:

(1) Review information developed or distributed by the Technical and Environmental Assistance Program to ensure that the information is understandable to the general public; and

(2) Prepare periodic reports to the Governor on the compliance status of the Technical and Environmental Assistance Program. The reports must be forwarded to the federal Environmental Protection Agency complying with the requirements of the federal Paperwork Reduction Act of 1980, Public Law 96-511, as amended; the federal Regulatory Flexibility Act, 5 United States Code, Sections 601 to 612; and the federal Equal Access to Justice Act, Public Law 96-481, as amended; and

C. The Office of Pollution Prevention established under section 342, subsection 4, paragraph B.

In conducting its review under paragraphs A to C, the committee may submit recommendations for statutory changes to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters.

38 § 343-E. Voluntary response action program

1. Liability protection for complete cleanup. Subject to the provisions of this section, a person may not be deemed a responsible party and that person is not subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 or 1371 for, or as a result of, a discharge, release or threatened release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products, if the person investigates the discharge, release or threatened release and undertakes and completes response actions to remove or remedy all known discharges, releases and threatened releases at an identified area of real property in accordance with a voluntary response action plan approved by the commissioner.

2. Liability protection for partial cleanup. The commissioner may approve a voluntary response action plan submitted under this section that does not require removal or remedy of all discharges, releases and threatened releases at an identified area of real property conditioned upon any or all of the terms identified in subsection 3 and based on consideration of the following:

A. If reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development in a manner that protects public health and the environment;

B. The response actions and the activities associated with any reuse or development proposed for the property will not cause, contribute or exacerbate discharges, releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan and will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases or threatened releases; and

C. The owner of the property that is the subject of the partial voluntary response action plan agrees to cooperate with the commissioner, the requestor or the commissioner's authorized representatives to avoid any action that interferes with the response actions.

3. Conditions for protection. The commissioner may condition the protection from liability provided by this section on the requestor's agreement to any or all of the following terms that the commissioner may determine to be necessary:

A. To provide access to the property to the commissioner and the commissioner's authorized representatives;

B. To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment, and structures on the property; and

C. To the extent the requestor has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in paragraph A or B. An agreement under this subsection must apply to and be binding upon the successors and assigns of the owner. To the extent the requestor has title to the property, the requestor shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located.

4. Investigation report. A voluntary response action plan submitted for approval of the commissioner must include an investigation report prepared by an appropriate professional that identifies and describes the nature and extent of the discharges, releases and threatened releases at the identified area of real property, methods of investigation, the analytical results and the professional's evaluation of this information.

5. Approval of plan. When the commissioner approves a voluntary response action plan pursuant to subsection 1 or 2, the commissioner shall include in the approval a no-action assurance pursuant to subsection 9, acknowledging that so long as the plan is implemented pursuant to its terms and with the exercise of due care, the person submitting the plan and those persons identified in subsection 6 will receive the protection from liability provided under this section. Upon completion of the voluntary response action plan, the parties implementing the voluntary response action plan shall notify the commissioner who shall issue a certificate of completion upon demonstration by the parties that the response action is complete. In addition, a person who has submitted and received department approval of a voluntary response action plan and is implementing or has implemented that plan pursuant to its terms is not liable for claims for contribution regarding the site.

6. Additional persons protected from liability. In addition to the person who undertakes and completes a voluntary response action pursuant to an approved voluntary response action plan, the liability protection provided by this section applies to the following persons:

A. An owner or operator who is a responsible party or who is subject to department orders or other enforcement proceedings or otherwise responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threat of release and who undertakes and completes a voluntary response action plan that fully remediates all known discharges, releases or threatened releases. The liability protection is limited to protection from further clean-up requirements and does not include protection from liability for penalties, fines or natural resource damages, to the extent applicable, unless a no-action assurance issued pursuant to subsection 9 so provides;

B. A person providing financing to the person who undertakes and completes the response actions or who acquires or develops the identified property;

C. A lender or fiduciary as defined in section 1362 who arranges for the undertaking and completion of response actions;

D. A person who seeks to acquire or develop the identified property and who arranges for the undertaking and completion of response actions;

E. A successor or assign of a person to whom the liability protection applies; and

F. A person acting in compliance with a voluntary response action program approved by the commissioner who, while implementing the voluntary response action plan and exercising due care in implementation, causes, contributes or exacerbates a discharge or release, provided that the discharge or release is removed or remediated to the satisfaction of the commissioner.

7. Persons ineligible for protection from liability. The protection from liability provided by this section does not apply to:

A. A person who causes, contributes or exacerbates a discharge, release or threatened release that was not remedied under an approved voluntary response action plan;

B. For partial voluntary response action plans that do not require removal or remediation of all known releases, a person who was responsible under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 for a discharge, release or threatened release; or

C. A person who obtains approval of a voluntary response action plan for purposes of this section by fraud or intentional misrepresentation, or by knowingly failing to disclose material information, or a successor or assign of the person who obtained approval if that successor or assign had knowledge that the approval was obtained by fraud or intentional misrepresentation or by knowingly failing to disclose material information.

8. Effect of protection from liability. This section does not affect the authority of the commissioner to exercise the powers or duties under law with respect to a discharge, release or threatened release, or the right of the commissioner or any other person to seek relief available, against a party who is not subject to the liability protection provided under this section.

9. No-action assurance. The commissioner shall issue a written determination or enter into an agreement pursuant to subsections 1 or 2 to take no action under sections 568; 570; 1304, subsection 12; 1318-A; 1319-J; 1361 to 1367 and 1371 against a person afforded protection for undertaking a voluntary response action plan pursuant to subsection 6 when the commissioner approves a voluntary response action plan pursuant to subsections 1 and 2. For partial voluntary response action plans approved under subsection 2, the commissioner's written determination or agreement to take no action may be limited to the matters addressed by the terms of the voluntary response action plan.

A. A determination issued or agreement entered into under this subsection may be conditioned upon those terms identified in subsection 3 and upon any other reasonable conditions determined necessary by the commissioner.

B. A determination issued or agreement entered into under this subsection may extend to the successors and assigns of the person to whom it originally applies if the successors and assigns are bound by the conditions in the determination or agreements.

C. Issuance of a determination or execution of an agreement under this subsection does not affect the authority of the commissioner to expend funds, to take response action with respect to the discharge or release subject to the determination or agreement, or to take administrative or judicial action with respect to persons not bound by the determination or agreement.

38 § 343-F. Reporting and disclosure requirements

An environmental professional who obtains analytical information indicating a discharge or release of a hazardous substance, hazardous waste, hazardous matter, special waste, pollutant or contaminant, including petroleum products or by-products at a site, at levels that, in that professional's best professional judgment, require removal or remedial action to prevent significant threats to public health or the environment shall advise that professional's client of that information.

If the client of the environmental professional is not the owner or operator of the site, the client shall disclose the analytical information to the owner or operator of the site. Upon receipt of that information, the owner or operator shall submit this information to the commissioner within a reasonable time period unless the time period is otherwise prescribed by law. This section does not affect the legal protections afforded to confidential business information or other privileges, if any, that may be applicable. If the client makes a disclosure and the owner or operator does not submit this information to the commissioner, the client and the environmental professional may not be held liable for the owner's or the operator's failure to disclose.

38 § 344. Processing of applications

1. Acceptance and notification. The commissioner shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 working days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th working day after receipt by the department. If the application is not accepted, the commissioner shall return the application to the applicant with the reasons for nonacceptance specified in writing. Any applicant whose application has not been accepted by the commissioner shall attend a

presubmission meeting with the department before resubmitting that application. The commissioner shall notify the board of all applications accepted as complete.

An application is acceptable as complete for processing if the application is properly filled out and information is provided for each of the items included on the form. Acceptance of an application as complete for review does not constitute a determination by the department on the sufficiency of that information and does not preclude the department from requesting additional information during processing.

The commissioner shall require the applicant to provide notice to the public for each application for a permit or license accepted. The commissioner shall solicit comments from the public for each application in a manner prescribed by the board in the rules.

All correspondence notifying an applicant of denial of an application by the board or commissioner must be by certified mail, return receipt requested.

1-A. Governing rules. An application for a permit, license or approval is processed under the substantive rules in effect on the date the application or request for approval is determined to be complete for processing. Notwithstanding Title 1, section 302, after the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402 (c)(1) of the Federal Water Pollution Control Act, as amended, any waste discharge license issued or modified by the State pursuant to its authority to grant permits under the Federal Water Pollution Control Act must comply with State statutory or regulatory requirements that take effect prior to final issuance of that license.

2-A. Processing time limits, decisions and appeals. After the commissioner accepts an application for processing, the commissioner may approve, approve with conditions, disapprove or refer the application as follows.

A. The commissioner shall decide as expeditiously as possible if an application meets one or more of the criteria set forth in section 341-D, subsection 2 and shall request that the board assume jurisdiction of that application. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner shall request that the board assume jurisdiction of the application.

B. The commissioner shall decide whether an application meets the permit by rule provisions under subsection 7 within 20 working days after notifying the applicant of acceptance of the application.

C. For those applications that do not fall under the permit by rule provisions of subsection 7, the commissioner shall decide upon the application pursuant to the provisions of section 344-B.

Any person aggrieved by a final license or permit decision of the commissioner may appeal that decision to the board. The filing of an appeal with the board is not a prerequisite for the filing of a judicial appeal.

2-B. Conflict with federal requirements. The commissioner may waive the time requirements of this section for those activities which require a federal permit or license when those provisions are inconsistent with federal law.

4-A. Draft decisions and commissioner recommendations. Draft permits and licenses and commissioner recommendations are subject to the following provisions.

A. For those applications to be decided by the commissioner that do not fall under the permit by rule provisions of subsection 7, the commissioner shall, if requested by the applicant or any interested party, issue a draft permit or license and shall give reasonable notice to the applicant and to any other person who has notified the commissioner of an interest in the application before the commissioner takes final action on the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 5 working days before the commissioner takes final action on the application.

REVISON NOTE: In paragraph A in the 2nd and 3rd lines "permit by rule provisions" should be 'permit-by-rule provisions'

B. For those applications to be decided by the board, the commissioner shall provide a summary of the application to the board, all interested governmental agencies and other interested parties in a manner prescribed by the board by rule. The rule must provide at least 10 working days for the receipt of comments on the application prior to the preparation of a draft permit or license. If requested by the applicant or any interested party, the commissioner shall prepare a draft permit or license and shall give reasonable notice of the date the board will act on the application to the applicant and to any other person who has notified the commissioner of an interest in the application. The draft permit or license must be made available to the applicant and to all interested persons at the Augusta and appropriate regional offices of the department at least 15 working days before the board acts on the application.

The commissioner may incorporate comments on draft permits at the discretion of the commissioner. The commissioner may make any revised draft available for public comment. If the commissioner decides the draft is substantially revised, the commissioner shall make it available for public comment.

6. Fees. The commissioner may establish reasonable fees for the reproduction of materials in the department's custody, including all or part of any application submitted to the department and any records of public hearings. All such fees may be retained by the department and deposited in the Maine Environmental Protection Fund to reimburse expenses incurred in reproducing these materials.

7. Permit by rule. The Board of Environmental Protection may permit, by rule, any class of activities that would otherwise require the individual issuance of a permit or approval by the board, if the board determines that activities within the class will have no significant impact upon the environment. Any such rule must describe with specificity the class of activities covered by the rule and may establish standards of design, construction or use as may be considered necessary to avoid adverse environmental impacts. Any such rule must require notification to the commissioner prior to the undertaking of the regulated activity.

The commissioner shall annually review activities requiring permits or approval from the department to determine whether any additional classes of activities are more effectively administered under a permit by rule system. As part of this review, the commissioner shall solicit public comments on recommendations for activities to be included under permit by rule and shall review the performance of the existing permit by rule program, including a review of the compliance record of the permit by rule program. The commissioner shall annually recommend to the board any additional categories of permits for the board to permit by rule.

8. Effective date of license. Except as provided in this subsection, a license granted by the commissioner is effective when the commissioner signs the license. The commissioner may attach a condition to the license requiring up to a 30-day delay in any physical alteration of the project area and any construction activity authorized by the license. A license granted by the board is effective when the chair of the board or the chair's designee signs the license.

9. License renewals and transfers. For purposes of this section, a request for a license or permit renewal or transfer is considered an application.

38 § 344-A. Outside review of applications

The commissioner may enter into agreements with individuals, partnerships, firms and corporations outside the department, referred throughout this section as "outside reviewers," to review applications or portions of applications submitted to the department. The commissioner has sole authority to determine the applications or portions of applications to be reviewed by outside reviewers and to determine which outside reviewer is to perform the review. When selecting an outside reviewer, all other factors being equal, the commissioner shall give preference to an outside reviewer who is a public or quasi-public entity, such as the University of Maine System or the soil and water conservation districts. The commissioner may enter into an agreement with an outside reviewer only with the consent of the applicant and only if the applicant agrees in writing to pay all costs associated with the outside review.

1. Standards for outside review. Prior to entering into an agreement with an outside reviewer, the commissioner must determine that:

A. The agreement protects the public interest and the interest of the applicant;

B. The agreement ensures a fair, consistent and adequate review of the application;

C. The agreement provides the public with the same opportunity to comment on the application as would be provided if the application were reviewed by the department;

D. The outside reviewer meets the minimum qualification standards established by the commissioner; and

E. The application can not be reviewed by existing departmental personnel in a reasonable period of time.

2. Qualifications. The commissioner shall establish qualification standards for outside reviewers and shall develop a list of qualified outside reviewers. Standards established by the commissioner must include initial qualification standards and standards ensuring that outside reviewers continue to maintain a high level of scientific and regulatory expertise in one or more relevant areas of knowledge.

3. Conflict of interest. An outside reviewer may not review any portion of an application submitted by an applicant who directly or indirectly employed the reviewer in any capacity at any time during the 12-month period immediately preceding the submission of the application. An outside reviewer must sign a written agreement with the commissioner not to be employed, directly or indirectly, by any applicant whose application was reviewed by that reviewer for at least 12 months from the date the review of the application is complete.

4. Penalty. Notwithstanding section 349, any person who knowingly violates subsection 3 is guilty of a Class D crime. Notwithstanding Title 17-A, sections 4-A and 1301, the fine for each violation may not be less than $5,000 nor more than $25,000.

38 § 344-B. Timetables for processing permit applications

Pursuant to the provisions of this section, the commissioner shall determine and annually publish a processing time for each type of permit or license issued by the department. When establishing processing times for permits or licenses, the commissioner shall take into consideration all duties and responsibilities of the department and the availability of resources.

The provisions of this section apply only to new permit and license applications.

1. Publication of timetables. No later than August 1st of each year, the commissioner shall publish processing timetables for each permit and license issued by the department. Permit and license processing timetables must be published simultaneously in all newspapers designated by the Secretary of State as papers of record under Title 5, section 8053, subsection 5. The commissioner shall enter the published processing timetables into the record of the board at the first meeting of the board following publication.

Except as provided in this section, the deadline governing the processing of an application is determined by the timetable in effect on the date the application is determined to be complete.

2. Consultation. Prior to publishing timetables pursuant to subsection 1, the commissioner shall review the proposed processing timetables with an advisory committee established for that purpose. The commissioner shall appoint the members of the advisory committee. In appointing the members, the commissioner shall seek to appoint a committee that is broadly representative of business, environmental and other interest groups. The purpose of the committee is solely advisory.

3. Processing period. The processing period for an application begins on the date the commissioner notifies the applicant that the application is complete. Except as provided in paragraph A, the consent of the applicant is required to stop the processing period or to extend the deadline.

A. The processing time for an application stops if:

(1) The commissioner determines that a public hearing is required. Under this subparagraph, the processing period may be stopped only for as long as necessary to accommodate the public hearing process and must commence at the end of the comment period following the public hearing;

(2) The board assumes jurisdiction over an application. If the board assumes jurisdiction over an application, the board shall set a new timetable for the application and shall stop the processing period or extend the deadline subject to the conditions of this subsection. The forfeiture provisions of subsection 5 do not apply to timetables set by the board; or

(3) The commissioner determines that the applicant has significantly modified the application. Under this subparagraph, the processing period is stopped until the applicant and the commissioner agree to a new timetable.

B. The commissioner may stop the processing time with the consent of the applicant for any period of time agreeable to the commissioner and the applicant if the commissioner determines that:

(1) Additional information is required from the applicant;

(2) Agencies other than the department that are required to comment on an application do not respond within the time frames established by a memorandum of understanding between the agencies; or

(3) The applicant wishes to stop the processing period or to extend the deadline.

Expiration of a processing period may not be the sole reason for denial of an application.

4. Multiple permits. For projects that require more than one permit from the department, the commissioner and the applicant shall determine the timetable or timetables applicable to all permit or license applications required for that project at a presubmission meeting.

5. Forfeiture. If the commissioner fails to approve or deny an application prior to the applicable deadline, the commissioner shall pay the applicant an amount equal to 50% of the permit or license processing fee. The remainder of the permit or license processing fee is payable to the applicant if the commissioner does not approve or deny the application within 120 calendar days after that deadline. Forfeitures payable under this subsection may not exceed the permit or license processing fee paid by the applicant.

6. Report. Beginning on January 1, 1994, the commissioner shall report annually to the joint standing committee of the Legislature having jurisdiction over energy and natural resources matters on permitting and licensing activities under this section. The report must include, but is not limited to, a list of the reasons for permit or license extensions and a summary of the number of permit or license extensions required as a result of the failure of an outside agency to provide the department with comments within the required time established by a memorandum of understanding.

38 § 345-A. Hearings

1-A. Department hearings. The board and commissioner may hold public hearings as necessary to carry out responsibilities under this Title.

2. Maine Administrative Procedure Act. Except as provided elsewhere, all hearings of the department must be conducted in accordance with the procedural requirements of the Maine Administrative Procedure Act, Title 5, chapter 375.

2-A. Intervenor procedures. The board shall adopt rules that define the procedures and scope of participation for intervenors.

3. Fees. The Commissioner of Environmental Protection may establish fees which recover the expenses entailed in providing notice to interested persons required by this section or reproducing all or any part of the record of any hearings for the applicant or interested persons.

4. Subpoena power. The board and commissioner may each issue subpoenas to compel the production of books, records and other data related to the matters in issue at any hearing. If any person served with a subpoena demonstrates to the satisfaction of the issuer of the subpoena that the production of the information would, if made public, divulge methods or processes which are entitled to protection as trade secrets, the information shall be disclosed only at a nonpublic portion of the hearing and shall be confidential and not available for public inspection. If any person fails or refuses to obey such a subpoena, the issuer of the subpoena may apply to any Justice of the Superior Court for an order compelling that person to comply with the subpoena. The Superior Court may issue an order and may punish failure to obey the order as civil contempt.

38 § 346. Judicial appeals

1. Appeal to Superior Court. Except as provided in section 347-A, subsection 3, any person aggrieved by any order or decision of the board or commissioner may appeal to the Superior Court. These appeals to the Superior Court shall be taken in accordance with Title 5, chapter 375, subchapter VII.

2-A. Appeal. Any party to the appeal in the Superior Court under this section may obtain review by appeal to the Supreme Judicial Court sitting as the law court. The appeal shall be taken as in other civil cases.

3. Limitation. No riparian or littoral owner on any body of water shall have a cause of action either at law or in equity against any licensee licensed under section 414 to discharge into the same body of water nor be deemed an aggrieved person under this section based on the fact that such licensee is not a riparian or littoral owner on such body of water. No such owner shall have a cause of action either at law or in equity against such licensee nor be deemed an aggrieved person under this section based on the fact that such licensed discharge will prevent the owner from having the reasonable use and enjoyment of such body of water, provided that such licensed discharge will not either of itself or in combination with existing discharges to the body of water lower the statutory classification of such body of water, nor cause actual damages to such owner.

38 § 347-A. Violations

1. General procedures. This subsection sets forth procedures for enforcement actions.

A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the commissioner may initiate an enforcement action by taking one or more of the following steps:

(1) Resolving the violation through an administrative consent agreement pursuant to subsection 4, signed by the violator and approved by the board and the Attorney General;

(2) Referring the violation to the Attorney General for civil or criminal prosecution;

(3) Scheduling and holding an enforcement hearing on the alleged violation pursuant to subsection 2; or

(4) With the prior approval of the Attorney General, initiating a civil action pursuant to section 342, subsection 7.

B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations, to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before

issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action.

2. Hearings. The commissioner shall give at least 30 days' written notice to the alleged violator of the date, time and place of any hearing held pursuant to subsection 1, paragraph C. The notice shall specify the act or omission which is claimed to be in violation of law or regulation.

Any hearing conducted under the authority of this subsection shall be in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. At the hearing, the alleged violator may appear in person or by attorney and answer the allegations of violation and file a statement of the facts, including the methods, practices and procedures, if any, adopted or used by that person to comply with this chapter and present such evidence as may be pertinent and relevant to the alleged violation.

After hearing, or in the event of a failure of the alleged violator to appear on the date set for a hearing, the commissioner shall, as soon as practicable, make findings of fact based on the record and, if the commissioner finds that a violation exists, shall issue an order aimed at ending the violation. The person to whom an order is directed shall immediately comply with the terms of that order.

3. Emergency orders. Whenever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations which the department administers or of the terms or conditions of any of the department's orders, which is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger. Service of a copy of the commissioner's findings and order issued under this emergency procedure shall be made by the sheriff or deputy sheriff within the county where the person to whom the order is directed operates or resides. In the event that the persons are so numerous that the specified method of service is a practical impossibility or the commissioner is unable to identify the person or persons causing or contributing to the hazard, the commissioner shall make the order known through prominent publication or announcement in news media serving the affected area.

The person to whom the order is directed shall comply with the order immediately. The order may not be appealed to the Superior Court in the manner provided in section 346, but the person may apply to the board for a hearing on the order which shall be held by the board within 48 hours after receipt of application. Within 7 days after the hearing, the board shall make findings of fact and continue, revoke or modify the order. The decision of the board may be appealed to the Superior Court in the manner provided by section 346.

4. Administrative consent agreements. Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.

A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator.

B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement. Consent agreements shall, to the greatest extent possible, clearly set forth all the specific requirements or conditions with which the alleged violator must comply.

C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision.

D. The public may make written comments to the board at the board's discretion on an administrative consent agreement entered into by the commissioner and approved by the board.

E. When the department and the alleged violator can not agree to the terms of a consent agreement and the department elects to bring an enforcement action in District Court pursuant to section 342, subsection 7, the District Court shall refer the parties to mediation if either party requests mediation at or before the time the alleged violator appears to answer the department's complaint. The parties must meet with a mediator appointed by the Court Alternative Dispute Resolution Service created in Title 4, section 18-B at least once and try in good faith to reach an agreement. After the first meeting, mediation must end at the request of either party. If the parties have been referred to mediation, the action may not be removed to Superior Court until after mediation has occurred.

5. Enforcement. All orders of the department may be enforced by the Attorney General. If any order of the department is not complied with, the commissioner shall immediately notify the Attorney General.

6. Public participation in enforcement settlements. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, Section 1251 et seq., as amended, in any civil enforcement action brought under this section, section 348 or 349 involving discharges regulated by the Federal Water Pollution Control Act, the department shall publish notice of and provide at least 30 days for public comment on any proposed settlement as follows.

A. In the case of administrative consent agreements, the proposed agreement must be filed with the board and notice of the filing must be placed on the board's agenda

at least 30 days before the board takes any action on the agreement. The Attorney General and the department shall receive and consider, and the department shall provide the board with summaries of, any written comments relating to the proposed agreement.

B. In the case of judicial enforcement, each proposed judgment by consent must be filed with the court at least 30 days before the judgment is entered by the court. Prior to the entry of judgment, notices of the proposed judgment must be published in a newspaper having general circulation in the area in which the alleged violation occurred, and the Attorney General and the department shall receive and consider, and file with the court, any written comments relating to the proposed judgment.

C. The Attorney General shall reserve the right to withdraw or withhold its consent to the proposed judgment if the comments, views or allegations concerning the judgment disclose facts or considerations that indicate that the proposed judgment is inappropriate, improper or inadequate and oppose an attempt by any person to intervene in the action. When the public interest in this notification process is not compromised, the Attorney General may permit an exception to publication as set forth in this section in a specific case where extraordinary circumstances require a period shorter than 30 days or a notification procedure other than that set forth in this section.

38 § 347-C. Right of inspection and entry

Employees and agents of the Department of Environmental Protection may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of an industrial user of a publicly owned treatment works, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the commissioner or of the board.

38 § 348. Judicial enforcement

1. General. In the event of a violation of any provision of the laws administered by the department or of any order, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, the Attorney General may institute injunction proceedings to enjoin any further violation thereof, a civil or criminal action or any appropriate combination thereof without recourse to any other provision of law administered by the department.

2. Restoration. The court may order restoration of any area affected by any action or inaction found to be in violation of any provision of law administered by the department or of any order, rule, regulation, license, permit, approval or decision of the board or commissioner or decree of the court, as the case may be, to its condition prior to the violation or as near thereto as may be possible. Where the court finds that the violation was wilful, the court shall order restoration under this subsection unless the restoration will:

A. Result in a threat or hazard to public health or safety;

B. Result in substantial environmental damage; or

C. Result in a substantial injustice.

3. Injunction proceedings. If the department finds that the discharge, emission or deposit of any materials into any waters, air or land of this State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property the department shall forthwith request the Attorney General to initiate immediate injunction proceedings to prevent such discharge. The injunction proceedings may be instituted without recourse to the issuance of an order, as provided for in section 347-B.

REVISION NOTE: Subsection 3, first sentence needs "," after "property"

4. Settlement. A person who has resolved that person's liability to the State in an administrative or judicially approved settlement and is implementing or has fully implemented that settlement pursuant to its terms is not liable for claims by other potentially liable persons regarding response actions, response costs or damages, including without limitation natural resource damages, addressed in the settlement. The settlement does not discharge any other potentially liable persons unless its terms so provide. The protection afforded by this subsection includes protection against contribution claims and all other types of claims under state law that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another potentially liable person, if those actions, costs or damages are addressed in the settlement, but does not include protection against claims based on contractual indemnification or other express contractual agreements to pay the costs or damages. A potentially liable person who commences an action against a person who is protected from suits under this subsection is liable to the person against whom the claim is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees. This section is not intended to create a right to contribution or other cause of action or to make a person liable to pay a portion of another person's response costs, damages or civil penalties.

38 § 349. Penalties

1. Criminal penalties. Any person who intentionally, knowingly, recklessly or with criminal negligence violates any provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is guilty of a Class E crime and may be punished accordingly, except, notwithstanding Title 17-A, section 1301, subsection 1-A, paragraph C or Title 17-A, section 1301, subsection 3, paragraph E, the fine for such a violation may not be less than $2,500 nor more than $25,000 for each day of the violation, except that the minimum amount for knowing violations is $5,000 for each day of violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

2. Civil penalties. Any person who violates any provision of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is subject to a civil penalty, payable to the State, of not less than $100 nor more than $10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than $25,000 for each day of the violation.

2-A. Supplemental environmental projects. In settling a civil enforcement action for any violation of any of the provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, the parties may agree to a supplemental environmental project that mitigates not more than 80% of the assessed penalty. "Supplemental environmental project" means an environmentally beneficial project primarily benefiting public health or the environment that a violator is not otherwise required or likely to perform.

A. An eligible supplemental environmental project is limited to the following categories:

(1) Pollution prevention projects that eliminate all or a significant portion of pollutants at the point of generation;

(2) Pollution reduction projects that significantly decrease the release of pollutants into a waste stream at the point of discharge to a point significantly beyond levels required for compliance;

(3) Environmental enhancement projects in the same ecosystem or geographic area of the violation that significantly improve an area beyond what is required to remediate any damage caused by the violation that is the subject of the enforcement action;

(4) Environmental awareness projects substantially related to the violation that provide training, publications or technical support to members of the public regulated by the department;

(5) Scientific research and data collection projects that advance the scientific basis on which regulatory decisions are made;

(6) Emergency planning and preparedness projects that assist state or local emergency response and planning entities in preparing or responding to emergencies; and

(7) Public health projects that provide a direct and measurable benefit to public health.

B. Supplemental environmental projects may not be used for the following situations:

(1) Repeat violations of the same or a substantially similar law administered by the department by the same person;

(2) When a project is required by law;

(3) If the violator had previously planned and budgeted for the project;

(4) To offset any calculable economic benefit of noncompliance;

(5) If the violation is the result of reckless or intentional conduct; or

(6) If the project primarily benefits the violator.

Any settlement that includes a supplemental environmental project must provide that expenditures are not tax deductible and are ineligible for certification as tax exempt pollution control facilities pursuant to Title 36, chapters 105 and 211.

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any order, rule, license, permit, approval or decision of the board or commissioner, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule, license, permit, approval or decision of the board or commissioner or who fails to comply with any information submittal required by the commissioner pursuant to section 568, subsection 3, or section 1364, subsection 3, is, upon conviction, subject to a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

5. Considerations. In setting a penalty, the court shall consider, but shall not be limited to, the following:

A. Prior violations by the same party;

B. The degree of environmental damage that cannot be abated or corrected;

C. The extent to which the violation continued following an order of the commissioner or board to correct it; and

D. The importance of setting a civil penalty substantial enough to deter others from similar violations.

6. Maximum penalties. The maximum civil penalty may exceed $10,000 for each day of that violation, but may not exceed $25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years, and the maximum criminal penalty may exceed $25,000 for each day of violation, but may not exceed twice the amounts in subsection 1, when it can be shown that there has been a previous violation of the same law by the same party.

7. Notification. The commissioner shall notify all newspapers of general circulation in the State of all administrative consent agreements, court-ordered consent decrees and adjudicated violations involving laws administered by the department.

8. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

9. Unavoidable malfunctions. The following considerations apply to violations resulting from unavoidable malfunctions.

A. The commissioner may exempt from civil penalty an air emission in excess of license limitations if the emission occurs during start-up or shutdown or results exclusively from an unavoidable malfunction entirely beyond the control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any emission and takes corrective action as soon as possible. There may be no exemption if the malfunction is caused, entirely or in part, by poor maintenance, careless operation, poor design or any other reasonably preventable condition or preventable equipment breakdown. The burden of proof is on the licensee seeking the exemption under this subsection. In the event of an unavoidable malfunction, the

licensee must notify the commissioner in writing within 48 hours and submit a written report, together with any exemption requests, to the department on a quarterly basis. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.

B. An affirmative defense is established for a wastewater discharge in excess of license limitations if the discharge results exclusively from unintentional and temporary noncompliance with technology-based limitations because of factors entirely beyond the reasonable control of the licensee and the licensee has taken all reasonable steps to minimize or prevent any discharge and takes corrective action as soon as possible. There is not an affirmative defense if the malfunction is caused, entirely or in part, by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation. The burden of proof is on the licensee seeking the affirmative defense under this subsection. In the event of an unavoidable malfunction, the licensee must notify the commissioner orally within 24 hours, and in writing within 5 days. The commissioner shall annually report to the joint standing committee of the Legislature having jurisdiction over natural resource matters with regard to the exercise of this authority.

38 § 349-A. Mining rules

The board and the Maine Land Use Regulation Commission shall jointly adopt or amend rules necessary to regulate nonferrous metal mining by February 1, 1991. The commissioner and the Maine Land Use Regulation Commission shall convene a joint task force composed of 3 members from each agency to carry out the duties of this section. Any consultants hired must be jointly chosen by both the commissioner and the Director of the Maine Land Use Regulation Commission. Any rules adopted pursuant to this section must include reclamation requirements for a nonferrous metal mining site.

CHAPTER 3

PROTECTION AND IMPROVEMENT OF WATERS

SUBCHAPTER I

ENVIRONMENTAL PROTECTION BOARD

Article 1

Organization and General Provisions

§ 361-A. Definitions

Unless the context otherwise indicates, the following words when used in any statute administered by the Department of Environmental Protection shall have the following meanings:

1. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to water of the State.

1-A. Coastal streams. [Repealed. Laws 1985, c. 698, §1]

1-B. Agricultural activities. "Agricultural activities" means the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farm woodlot products, including Christmas trees.

1-B. Aquifer. [Repealed. Laws 1981, c. 470, Pt. A, §163]

1-C. Aquifer recharge area. "Aquifer recharge area" means land composed of permeable porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmit it to aquifers.

1-D. Aquifer. "Aquifer" means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as identified by the Natural Resources Information and Mapping Center.

1-E. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

1-F. Affordable housing. "Affordable housing" means dwellings, apartments or other living accommodations for households making at or below 80% of the median household income as determined by the Department of Economic and Community Development.

1-G. Board. "Board" means the Board of Environmental Protection.

1-H. Department. "Department" means the Department of Environmental Protection composed of the board and the commissioner.

1-I. Clean Water Act. "Clean Water Act" means the same as the Federal Water Pollution Control Act.

1-J. Code of Federal Regulations. "Code of Federal Regulations" means the codification of rules published in the Federal Register by the Federal Government, and include those rules effective on or before January 1, 1997.

1-K. Federal Water Pollution Control Act. "Federal Water Pollution Control Act" means the Federal public law 92-500 or 33 United States Code, sections 1251, et. seq., and including all amendments effective on or before January 1, 1997.

2. Fresh surface waters. "Fresh surface waters" means all waters of the State other than estuarine and marine waters and ground water.

2-A. Ground water. "Ground water" means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

2-B. Handle. "Handle" means to store, transfer, collect, separate, salvage, process, reduce, recover, incinerate, treat or dispose of.

3. Municipality. "Municipality" means a city, town, plantation or unorganized township.

3-A. Nonferrous metal mining. "Nonferrous metal mining" means hard rock mining for base and precious metals including copper, lead, tin, zinc, gold, silver, platinum, paladium and unspecified platinoid metals. "Nonferrous metal mining" does not include thorium or uranium.

3-B. Pollution prevention. "Pollution prevention" means the application of the toxics use reduction principles and reduction hierarchies, which are established in chapter 26, to manufacturing, commercial and consumer chemical use and energy production and consumption.

4. Person. "Person" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

4-A. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

4-A-1. Snow dump. "Snow dump" means a facility that is used for the storage of snow and incidental materials collected from public or private ways.

4-A-2. Road salt and sand-salt storage area. "Road salt and sand-salt storage area" means a facility that is used for the storage and handling of highway deicing materials.

4-B. Surface waste water disposal system. "Surface waste water disposal system" shall mean any system for disposal of waste waters on the surface of the earth, including, but not limited to, holding ponds, surface application and injection systems.

5. Estuarine and marine waters. "Estuarine and marine waters" means those portions of the Atlantic Ocean within the jurisdiction of the State, and all other waters of the State subject to the rise and fall of the tide except those waters listed and classified in sections 467 and 468.

6. Transfer of ownership. "Transfer of ownership" means a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the department.

7. Coastal streams. [Repealed. Laws 1973, c. 625, §269]

7. Waters of the State. "Waters of the State" means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State,

but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

§ 362. Authority to accept federal funds

The department is designated the public agency of the State for the purpose of accepting federal funds in relation to water pollution control, water resources and air pollution studies and control. The commissioner may, subject to the approval of the Governor, accept federal funds available for water pollution control, water resources and air pollution studies and control and meet such requirements with respect to the administration of the funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving federal funds. The Treasurer of State shall be the appropriate fiscal officer of the State to receive federal grants on account of water pollution control, water resources and air pollution studies and control, and the State Controller shall authorize expenditures therefrom as approved by the commissioner.

§ 362-A. Experiments and scientific research in the field of pollution and pollution control

Notwithstanding any other law administered or enforced by the department, the board is authorized to permit persons to discharge, emit or place any substances on the land or in the air or waters of the State, in limited quantities and under the strict control and supervision of the commissioner or the commissioner's designees, exclusively for the purpose of scientific research and experimentation in the field of pollution and pollution control. The research and experimentation conducted under this section is subject to such terms and conditions as the board determines necessary in order to protect the public's health, safety and general welfare, and may be terminated by the board or commissioner at any time upon 24 hours' written notice.

Prior to applying for approval of any project involving discharge of petroleum products to tidal waters under this section, the applicant shall first obtain written approval from the municipal officers of the municipality in which the project is proposed to take place. The applicant shall provide the municipal officers with a complete description of the project at least 90 days prior to the proposed date of the project. The municipal officers may hold a public hearing, provided that it is held within 45 days of the filing of the application with the municipality. The municipal officers shall approve a project within 60 days of receipt if they find that the project will not constitute a hazard to the health, safety or welfare of the residents of the municipality.

§ 363-D. Waiver or modification of protection and improvement laws

The commissioner or the commissioner's designee may waive or modify any of the provisions of this chapter if that waiver or modification promotes or assists any oil spill response activity conducted in accordance with the national contingency plan, a federal contingency plan, the state marine oil spill contingency plan, or as otherwise directed by the federal on-scene coordinator, the commissioner or commissioner's designee. A waiver issued by the commissioner under this section must be in writing.

§ 372. Exceptions

Nothing contained in this subchapter shall limit the powers of the State to initiate, prosecute and maintain actions to abate public nuisances to the extent consistent with the public interest, nor shall any license granted under this subchapter constitute a defense to any action at law for damages.

Article 1-B

GROUND WATER PROTECTION PROGRAM

§ 401. Findings; purpose

The Legislature finds and declares that the protection of ground water resources is critical to promote the health, safety and general welfare of the people of the State. Aquifers provide a significant amount of the water used by the people of the State. Aquifers and aquifer recharge areas are critical elements in the hydrologic cycle. Aquifer recharge areas collect, conduct and purify the water that replenishes aquifers.

The Legislature further finds and declares that an adequate supply of safe drinking water is a matter of the highest priority and that it is the policy of the State to protect, conserve and maintain ground water supplies in the State.

The Legislature further finds and declares that ground water resources are endangered by unwise uses and land use practices.

The Legislature further finds that these resources may be threatened by certain agricultural chemicals and practices, but that the nature and extent of this impact is largely unknown. Failure to evaluate this potential problem is likely to result in costly contamination of some ground water supplies leading to increased risks to the public health.

The Legislature further finds and declares it to be the purpose of this Article to require classification of the state's ground water resources.

The Legislature further finds and declares that there are numerous existing state agencies, commissions, boards or similar entities administering various statutes and programs relating to ground water. Because of the importance of ground water to the safety and well-being of the State, there is an urgent need for the coordination and development of the programs to assess the quality and quantity of and to protect ground water.

It is the intention of the Legislature that the Bureau of Geology provide coordination and develop programs for the collection and analysis of information relating to the nature, extent and quality of aquifers and aquifer recharge areas.

It is further the intention of the Legislature that existing programs related to ground water continue in their present form and that the Department of Environmental Protection provide coordination for the protection of ground water through existing statutes and regulations.

This article is not intended to limit a municipality's power to enact ordinances under Title 30-A, section 3001, to protect and conserve the quality and quantity of ground water.

§ 402. Research

The Bureau of Geology in cooperation with the Department of Environmental Protection, is authorized to conduct research and studies to determine recharge and cleansing rates of ground water in different sand and gravel and bedrock formations.

The Natural Resources Information and Mapping Center in cooperation with other agencies as appropriate shall conduct a 3-year program to assess the impact of agricultural practices and chemicals on ground water quality in selected agricultural areas and selected aquifers. The program shall evaluate the extent and level of contamination associated with pesticide use, the mechanisms by

which pesticides move through the soil and into ground water supplies, the synergistic effects of these substances and their persistence in ground water.

The survey shall report annually its progress to the joint standing committee of the Legislature having jurisdiction over natural resources

§ 403. Ground water quality

1. Legislative intent. The Legislature finds that sand and gravel aquifers are important public and private resources for drinking water supplies and other industrial, commercial and agricultural uses. The ground water in these formations is particularly susceptible to contamination by pollutants and, once polluted, may not recover for hundreds of years. It is the intent of the Legislature that information be developed which shall determine the degree that the state's sand and gravel aquifers have been contaminated and shall provide a base of knowledge from which decisions may be made to protect the aquifers.

2. Determination of ground water quality. The commissioner and the Department of Conservation shall delineate the primary recharge areas for all sand and gravel aquifers capable of yielding more than 10 gallons per minute. Utilizing existing water supply information and well drilling logs, the commissioner and the Department of Conservation shall determine depth to bedrock, depth to water table, surficial material stratigraphy and generalized ground water flow directions of the aquifers. The commissioner and the Department of Conservation shall also determine the extent and direction of contamination plumes originating from distinct sources within each area studied. The primary recharge areas, flow directions and contamination plumes are to be shown on maps of a scale of 1:50,000.

§ 404. Ground water rights

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Beneficial domestic use" means any ground water used for household purposes essential to health and safety, whether provided by individual wells or through public supply systems.

B. "Ground water" means all the waters found beneath the surface of the earth.

C. "Preexisting use" means any use which was undertaken by a public water supplier, a landowner or lawful land occupant or a predecessor in interest of either of them, at any time during the period of 3 years prior to the commencement of the use which resulted in the interference.

2. Cause of action created. Subject to the limitations of subsection 3 and except as provided by Title 23, section 652, a person is liable for the withdrawal of ground water, including use of ground water in heat pump systems, when the withdrawal is in excess of beneficial domestic use for a single-family home and when the withdrawal causes interference with the preexisting beneficial domestic use of ground water by a landowner or lawful land occupant.

3. Limitations. The liability imposed under subsection 2 shall be in compensatory damages only, to be recovered in an action brought by the landowner or other lawful land occupant whose ground water use has been interfered with, against the person whose subsequent use has caused the interference.

A. The damages shall be limited to the following:

(1) All costs necessary to restore the landowner or lawful land occupant to a status which is reasonably equivalent in terms of quantity and quality of ground water, made available on a similarly accessible and economic basis;

(2) Compensatory damages for loss or damage to property, including, without limitation, the loss of habitability of residence, caused to the landowner or lawful land occupant by reason of the interference, prior to restoration of the status provided for in subparagraph (1); and

(3) Reasonable costs, including expert witness and attorney fees, incurred in initiating and prosecuting an action when necessary to secure a judgment granting the relief provided for under this chapter.

B. The rights afforded by this chapter shall be in addition to, and not in derogation of, any other rights, whether arising under statute or common law, which any person may have to seek redress against any other person for ground water interference or contamination.

ARTICLE 1-E

MARINE ENVIRONMENTAL MONITORING PROGRAM

§ 410-F. Marine Environmental Monitoring Program

The Department of Environmental Protection in cooperation with the Department of Marine Resources shall establish the Marine Environmental Monitoring Program. The initial purpose of this program is to design a monitoring program to examine the extent and effect of industrial contaminants and pollutants on marine and estuarine ecosystems and to determine compliance with and attainment of water quality standards under article 4-A. This study must include, but is not limited to:

1. **Sources.** The sources, fates and biological availability of these contaminants;
2. **Impact.** The impact of these contaminants on marine and estuarine biota; and
3. **Assessment.** An assessment of the condition of marine and estuarine habitats.

The commissioner shall establish a task force to coordinate the continuing activities of the monitoring program. The Commissioner of Agriculture, Food and Rural Resources, the Commissioner of Environmental Protection, the Commissioner of Human Services and the Commissioner of Marine Resources shall appoint representatives to serve as members of the task force. The task force shall address the identification and removal of sources of marine pollution.

§ 410-G. Report required

The commissioner in cooperation with the Department of Marine Resources shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources and the joint standing committee of the Legislature having jurisdiction over marine resources during the first regular session of each Legislature. The initial report must include recommendations regarding the design of the monitoring program and the level of funding necessary to fully implement the program. The report is due on or before March 15th. The report must address the problems or potential problems of marine and estuarine resources caused by industrial contaminants. The commissioner also shall prescribe remedial steps to address problems identified in the report.

Article 1-F

NONPOINT SOURCE POLLUTION PROGRAM (HEADING: PL 1991, c. 345 (new))

§ 410-H. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 345 (new).]

1. Best management practice guidelines. "Best management practice guidelines" means recommended techniques or procedures or a combination of techniques or procedures that are determined by the appropriate agency identified in section 410-J to be the most effective practicable means of preventing or reducing pollution generated by nonpoint sources.

2. Nonpoint source. "Nonpoint source" means any source, excluding any source defined as a direct discharge in section 466, that discharges pollutants into the surface or ground waters of the State, including, but not limited to, sources related to agriculture, construction and maintenance of bridges, railways and roads, forest management and commercial, industrial or residential development.

§ 410-I. Cooperation with agencies

1. Agency cooperation. The commissioner shall cooperate and coordinate with the Commissioner of Agriculture, Food and Rural Resources; the Commissioner of Conservation; the Commissioner of Transportation; the Commissioner of Economic and Community Development; the Commissioner of Human Services; the Commissioner of Marine Resources; and the Director of the State Planning Office to ensure a coordinated approach to nonpoint source pollution control for agriculture, forestry, transportation and development.

2. Ranking of watersheds. In cooperation with the commissioner, the agencies identified in subsection 1 shall identify those watersheds that should receive highest priority for corrective action for nonpoint source pollution and those actions recommended in great pond watersheds to control phosphorus runoff.

§ 410-J. Program implementation

1. Agriculture. The Department of Agriculture, Food and Rural Resources shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from agricultural activities. The Department of Agriculture, Food and Rural Resources may recommend to farmers the use of best management practice guidelines.

2. Forestry. The Department of Conservation, Bureau of Forestry in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from wood harvesting and forest management activities. The Bureau of Forestry may publish best management practice guidelines for use by landowners and wood harvesters. Landowners and wood harvesters must be notified of these guidelines and assisted in their efforts to implement the guidelines in accordance with the Bureau of Forestry advisory programs under Title 12, sections 8611 and 8612.

3. Transportation. The Department of Transportation in cooperation with the commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from transportation-related activities. The Department of Transportation shall encourage all state or federally funded projects to use the best management practice guidelines. The Department of Transportation may provide technical assistance to municipalities.

4. Development. The commissioner shall develop best management practice guidelines to reduce and prevent nonpoint source pollution from development-related activities. State agencies shall follow these guidelines in construction or remodeling activities for state buildings and other capital improvements. The commissioner shall provide guidance and technical assistance to the Office of Community Development and municipalities to support implementation through growth management programs authorized by the growth management laws, Title 30-A, chapter 187, subchapter II and municipal subdivision ordinances.

§ 410-K. Program review

Prior to January 1, 1993, the commissioner shall submit to the joint standing committee of the Legislature having jurisdiction over energy and natural resource matters a report detailing the effectiveness of the program and making recommendations for program improvements and fee amounts for permit applications under chapter 3, subchapter I, articles 5-A and 6. The commissioner shall make recommendations on the advisability of enacting statutory or regulatory exemptions from the water quality discharge licensing requirements of section 413 for those activities conducted in compliance with best management practice guidelines under this article. The commissioner shall submit with these recommendations an analysis of the legal and enforcement issues raised by these exemptions, specifically, the need to adopt by rule best management practice guidelines. In recommending fees pursuant to this section, the commissioner shall consider the cost of technical review and compliance inspection for best management practices and shall recommend fees that cover these costs.

Article 1-G

LAKES ASSESSEMENT AND PROTECTION PROGRAM

§ 410-L. Lakes Assessment and Protection Program Established

The Lakes Assessment and Protection Program is established within the department to monitor and protect the health and integrity of the State's lakes.

§ 410-M. Lakes assessment and protection

In implementing the Lakes Assessment and Protection Program, the commissioner shall conduct activities within the following areas:

1. Education and technical assistance. Education and technical assistance relating to lake functions and values, watershed planning and management, implementation of best management practices, effects cumulative impacts and applicable laws and rules;

2. Resource monitoring and research. Monitoring and research relating to the ecology and quality of lake resources, the vulnerability and the status of lakes, the realtionship between the quality of lake resources and development, the design and effectiveness of best management practices and the effectiveness of efforts to protect lakes; and

3. Compliance monitoring and enforcement. Promoting and monitoring compliance with and enforcement of the natural resources protection laws, the mandatory shoreland zoning laws, the storm water management laws, the erosion and sedimentation control laws and other state and local laws providing standards for the protection of lakes.

In establishing priorities for activities within the Lakes Assessment and Protection Program, the commissioner shall consider the recommendations of the Great Pond Task Force developed pursuant to section 1842-A and the watershed priorities established by the Land and Water Resources Council pursuant to Title 5, section 3331.

Article 2

POLLUTION CONTROL

§ 411. State contribution to pollution abatement

The commissioner may pay an amount not to exceed 80% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners. The commissioner may make payments to the Maine Municipal Bond Bank to supply the State's share of the revolving loan fund established by Title 30-A, section 6006-A. The commissioner may pay up to 90% of the expense of a municipal or quasi-municipal pollution abatement construction program or a pollution abatement construction program in an unorganized township or plantation authorized by the county commissioners in which the construction cost of the project does not exceed $100,000 as long as total expenditures for the small projects do not exceed $1,000,000 in any fiscal year and not more than one grant is made to any applicant each year, except that the commissioner may pay a percentage of the cost of individual projects serving single-family dwellings, seasonal dwellings or commercial establishments according to the following schedule:

[NOTE: Differing changes were made to the following tables during 1999. See PL 1999, C.243 (first table) §3 and C. 375, §1 (second and third tables).]

ANNUAL INCOME	SINGLE-FAMILY DWELLING	SEASONAL DWELLING	COMMERCIAL ESTABLISHMENT
$0 to $5,000	100%	50%	50%
$5,001 to $20,000	90%	50%	50%
$20,001 to $30,000	50%	25%	50%
$30,001 to $40,000	25%	25%	25%
$40,001 or more	0%	0%	0%

ANNUAL INCOME	SINGLE-FAMILY DWELLING	SEASONAL DWELLING
$0 to $5,000	100%	25%
$5,001 to $20,000	90%	25%
$20,001 to $30,000	50%	25%
$30,001 to $40,000	25%	25%
$40,001 or more	0%	0%

GROSS PROFIT	COMMERCIAL ESTABLISHMENT

$0 to $50,000	50%
$50,001 to $100,000	25%
$100,000 or more	0%

For the purposes of this section, "annual income" means the sum of all the property owner's federal taxable income for the previous year for single-family or seasonal dwellings and "gross profit" means the sum of all the commercial establishment owner's gross profits for the previous year as listed on the relevant income tax returns.

To determine eligibility, the commissioner may require an applicant to submit a copy of the relevant federal income tax return of the owner or owners. In addition to any penalty adjudged under section 349, a person who knowingly makes any false statement, representation or certification in the application for a grant under this section and who receives such a grant shall, upon conviction, make restitution to the department in an amount equal to the amount of the grant plus interest and reasonable recovery cost incurred by the department.

For small individual projects, following a period of 90 days from the date of application for assistance under this section, or as ground conditions permit, the unavailability of financial assistance under this section does not relieve an applicant of an obligation to comply with the state water classification program, Title 38, chapter 3, subchapter I, article 4-A or any other provision of law.

State grant-in-aid participation under this section is limited to grants for waste treatment facilities, interceptor systems and outfalls. The word "expense" does not include costs relating to land acquisition or debt service, unless allowed under federal statutes and regulations.

The commissioner shall develop a project priority list, for approval and adoption by the board, for pollution abatement construction and salt or sand-salt storage building projects. The factors considered in developing the priority lists include, but are not limited to, protection of groundwater and surface water, land use, shellfish, general public health hazards and water contact activities. The commissioner shall revise the project priority list for municipal and county salt and sand-salt storage facilities by October 1, 1999 and for all other sand and salt storage facilities by April 1, 2000. An owner or operator of a salt or sand-salt storage area may appeal the ranking and provide new information to the commissioner within 120 days of notification, which may change the final priority ranking. The board shall release a final project priority list of municipal and county sites by April 1, 2000, and for all other sand and salt storage facilities by July 1, 2000. The board may not change the priority ranking for a municipal or county that prior to January 1, 1999 built a facility and also registered the site with the department pursuant to section 413.

All proceeds of the sale of bonds for the construction and equipment of pollution abatement facilities expended under the direction and supervision of the commissioner must be segregated, apportioned and expended as provided by the Legislature.

§ 411-A. State contribution to residential overboard discharge replacement projects

1. General authority. Subject to the availability of funds under section 411, the commissioner shall pay a portion of the expense of a pollution abatement construction project that results in the elimination of an overboard discharge to the waters of the State where that elimination is required under section 414-A, subsection 1-B. The costs eligible for payment under this program include the costs that the department requires for abandonment of the overboard discharge and the design, engineering and construction costs of the replacement system. Grants made under this section may be made directly to the owners of the overboard discharge and may also be made to sanitary and sewer

districts that have agreed to establish operation and maintenance programs for holding tanks within their boundaries.

2. Cost-share. The commissioner shall determine the portion of project expenses eligible for grants under this section as follows.

A. The commissioner shall pay 90% of the costs of a project that results in the removal of a year-round residential overboard discharge.

B. The commissioner shall pay 50% of the costs of a project that results in the removal of a commercial overboard discharge.

C. The commissioner shall pay 25% of the costs of a project that results in the removal of a seasonal residential overboard discharge, except that the commissioner shall pay 50% of the costs of that project if the Commissioner of Marine Resources certified that the project is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

For the purposes of this section and section 414-A, "year-round residential overboard discharge" means an overboard discharge from a human habitation occupied for more than 6 months in any calendar year and is the legal residence of the owner for federal and state income tax purposes.

3. Priority. The commissioner shall utilize grants made under this section to eliminate sources of contamination to shellfish harvesting areas and to eliminate public nuisance conditions.

4. Reimbursement. The commissioner shall utilize grants under this section to reimburse individuals for the costs of removing any overboard discharge, subject to the provisions of subsection 2, when:

A. The removal occurred:

(1) After June 1, 1987, but prior to September 30, 1989; or

(2) After September 30, 1989, but was carried out according to plans and specifications approved by the commissioner in advance of construction but prior to the offering of a grant under this section;

B. The removal resulted in the elimination of sources of contamination to shellfish areas or public nuisance conditions; and

C. The removal was the direct result of an unsuccessful licensing application under section 414-A, subsection 1-B or former section 464, subsection 4, paragraph G.

§ 411-B. Planning

The department is authorized to establish and conduct a continuous planning process in cooperation with federal, state, regional and municipal agencies consistent with the requirements of the Federal Water Pollution Control Act, 33 United States Code 1982, Section 1251, et seq., as amended.

§ 412. Grants by State for planning

1. Grants by State for planning. The commissioner is authorized to pay an amount at least 15%, but not to exceed 25%, of the expense incurred by a municipality or quasi-municipal corporation in preliminary or final planning of a pollution abatement program in the form of a grant. The amount may not be paid until the governing body of the municipality or the quasi-municipal corporation duly votes to proceed with preliminary or final planning of a pollution abatement program, as appropriate.

A. For the purposes of this section, "preliminary planning" means engineering studies that include analysis of existing pollution problems; estimates of the cost of alternative methods of waste treatment, studies of areas to be served by the proposed facilities and estimates of the cost of serving such areas; preliminary sketches of existing and proposed sewer and treatment plant layouts; and estimates of alternative methods of financing, including user charges, and other studies and estimates designed to aid the municipality or quasi-municipal corporation in deciding whether and how best to proceed with a pollution abatement program.

B. For the purposes of this section, "final planning" means the preparation of engineering drawings and specifications for the construction of waste treatment facilities, interceptor systems and outfalls or other facilities specifically designated in departmental rules. All proceeds from the sale of bonds for the planning of pollution abatement facilities expended under the direction and supervision of the commissioner must be segregated, apportioned and expended as provided by the Legislature.

§ 412-A. Technical and legal assistance

At the request of any recipient of state funds under section 411 or 412, the commissioner is authorized to provide technical assistance and, through the Attorney General, legal assistance in the administration or enforcement of any contract entered into, by or for the benefit of the recipient in connection with wastewater treatment works or other facilities assisted by these funds.

Whenever any state funds have been disbursed pursuant to section 411 or 412, the State, acting through the Attorney General, shall have a direct right of action against the recipient thereof, or any contractor, subcontractor, architect, engineer or manufacturer of any equipment purchased with these funds, to recover the funds, as well as any federal funds administered by the commissioner for the same purposes, which may be properly awarded as actual damages in an action alleging negligence or breach of contract.

§ 412-B. Consultation on waste water disposal

1. Consultation on disposal methods. The commissioner shall consult with and advise any person proposing or operating drainage, sewerage or industrial waste systems as to the best methods of disposal. In making recommendations, the commissioner shall consider the needs of the municipality, other municipalities and other persons affected.

2. Consultation on water pollution abatement and prevention. The commissioner may consult with and advise persons or corporations who are licensed or apply for a license under this subchapter on water pollution abatement and prevention.

3. Submission of plans for waste disposal. Any person who proposes a new system of drainage, sewage disposal, sewage treatment or industrial waste disposal into any waters of the State shall submit plans and specifications for the system to the commissioner for approval. Purely storm water systems located in or on or draining from public ways and any alterations in existing facilities are exempt from this requirement.

§ 413. Waste discharge licenses

1. License required. No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.

1-A. License required for surface wastewater disposal systems. No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department.

1-B. License required for subsurface wastewater disposal systems. No person may install, operate or maintain a subsurface wastewater disposal system without first obtaining a license therefor from the department, except that a license is not required for systems designed and installed in conformance with the plumbing code, as promulgated by the Department of Human Services under Title 22, section 42.

2. Exemptions. A person is not considered in violation of this section for the discharge of rock, sand, dirt and other pollutants resulting from erosion related to agricultural activities, subject to the following conditions.

A. The appropriate soil and water conservation district has recommended an erosion and sedimentation control plan or conservation plan for the land where this erosion originates.

B. The commissioner has certified that the plan meets the objectives of this chapter.

C. The commissioner determines that the agricultural activities are in compliance with the applicable portion of the plan, or the soil and water district has certified that funds from existing federal and state programs are not available to implement the applicable portion of the plan.

D. After the State receives authority to grant permits under the Federal Water Pollution Control Act, this exemption will not apply to any discharges considered point sources under federal law, including discharges from concentrated animal feeding operations and discharges from silvicultural point sources, as defined by federal law.

2-A. Exemptions; pesticide permits. [Repealed. Laws 1979, c. 281, §3]

2-A. Exemptions. [Repealed. Laws 1979, c. 663, §229]

2-A. Exemptions; pesticide permits. [Repealed. Laws 1979, c. 663, §229]

2-B. Exemptions; snow dumps. The department may by rule license categories of snow dumps when the activity would not have a significant adverse effect on the quality or classifications of the waters of the State, except there may be no snow dumps directly into the fresh surface waters of the State.

2-C. Dredge spoils. Holders of a permit obtained pursuant to the United States Clean Water Act, Public Law 92-500, Section 404, are exempt from the need to obtain a waste discharge license for disposal of dredged material into waters of the State when the dredged material is disposed of in an approved United States Army Corps of Engineers disposal site. Disposal of all dredged materials is governed by the natural resource protection laws, sections 480-A to 480-S.

2-D. Exemptions; road salt or sand-salt storage piles. The commissioner may exempt any road salt or sand-salt storage area from the need to obtain a license under this section for discharges to the groundwaters of the State when the commissioner finds that the exempt activity will not have a significant adverse effect on the quality or classifications of the groundwaters of the State. In making this finding, the commissioner's review must include, but is not limited to, the location, structure and operation of the storage area.

Owners of salt storage areas shall register the location of storage areas with the department on or before January 1, 1986. As required by section 411, the department shall prioritize municipal or quasi-municipal sand-salt storage areas prior to November 1, 1986.

New or existing salt or sand-salt storage areas registered after October 1, 1999 may be exempt from licensing under this section as long as such areas comply with siting, operational and best management practices adopted by rule by the department. Storage areas other than those owned by municipalities and counties and registered by October 1, 1999 are exempt for licensing under

this section as long as such areas comply with section 451-A, subsection 1-A and with operational and best management practices adopted by rule by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

2-E. Exemptions; pesticide permits. [Repealed. Laws 1997, c. 794, §A-13]

2-F. Exemption; aquaculture. Until the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, a person may not be considered in violation of this section if:

A. The discharge activity is associated with off-shore marine aquaculture operations in the estuarine and marine waters; and

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications.

2-G. Exemptions; oil and hazardous substances spill response. A license is not required under this section for the following discharges:

A. A discharge to groundwaters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if discharge complies with the instructions of the commissioner or the commissioner's designee; or

B. A discharge to surface waters of the State that occurs in the process of recovering, containing, cleaning up or removing an oil or hazardous substance spill or leak if the discharge complies with the instructions of an on-scene coordinator pursuant to 40 Code of Federal Regulations, Part 300.

3. Transfer of ownership. In the event that any person possessing a license issued by the department transfers the ownership of the property, facility or structure that is the source of a licensed discharge, without transfer of the license being approved by the department, the license granted by the department continues to authorize a discharge within the limits and subject to the terms and conditions stated in the license, provided that the parties to the transfer are jointly and severally liable for any violation thereof until such time as the department approves transfer or issuance of a waste discharge license to the new owner. The department may in its discretion require the new owner to apply for a new license, or may approve transfer of the existing license upon a satisfactory showing that the new owner can abide by its terms and conditions.

4. Conditions for licensing. [Repealed. Laws 1973, c. 450, §10]

5. Registration of discharges exempted from licensing. [Repealed. Laws 1973, c. 450, §10]

6. Unlicensed discharge. If after investigation the commissioner finds any unlicensed discharge, the commissioner may notify the Attorney General of the violation without recourse to the hearing procedures of section 347-A. The Attorney General shall proceed immediately under section 348.

7. Tidal waters and subtidal lands. In connection with a license under sections 414 and 414-A, whenever issued, the department may grant to a licensee a permit to construct, maintain and operate any facilities necessary to comply with the terms of that license in, on, above or under tidal waters or subtidal lands of the State. This permit may be issued upon such terms and conditions as the department determines necessary to insure that the facilities create minimal interference with existing uses, including a requirement that the licensee provide satisfactory evidence of financial

capacity, or in lieu thereof, a bond in such form and amount as the department may find necessary, to insure removal of such facilities. In the event that the facilities are no longer necessary in order for the licensee or successor thereof to comply with the terms of its license, the department may, after opportunity for notice and hearing, require the licensee or successor to remove all or any portion of the facilities from the tidal waters or subtidal lands. This removal may be ordered if the department determines that maintenance of the facilities will unreasonably interfere with navigation, the development or conservation of marine resources, the scenic character of any coastal area, other appropriate existing public uses of such area or public health and safety, and that cost of this removal will not create an undue economic burden on the licensee or successor

8. Treated wastewater. [Repealed. Laws 1997, c. 794, §A-16]

9. Emergency public water utility license. [Repealed. Laws 1997, c. 794 §A-17]

10. Marine aquaculture projects. After the State receives authority to grant permits under the Federal Water Pollution Control Act, 33 United States Code, 1982, the department may issue to an owner of a marine aquaculture project a license for the discharge of pollutants to those waters only if the following conditions are satisfied:

A. An application for a leasehold has been accepted as complete by the Department of Marine Resources and a copy of an approved leasehold is provided to the department prior to any discharge of pollutants;

B. The project will not have a significant adverse effect on water quality or violate the standards of the receiving water's classification;

C. The project will be managed and monitored in accordance with a program approved by the Department of Marine Resources;

D. The project is not located in waters classified as SA under section 465-B, subsection 1; and

E. Other applicable requirements of this chapter are met.

A license issued pursuant to this subsection is void if water quality is significantly affected by the project.

For the purposes of this section, an aquaculture project is a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable plants or animals in estuarine or marine waters.

§ 414. Applications for licenses

1. Administration. [Repealed. Laws 1977, c. 300, § 17]

2. Terms of licenses. Licenses are issued by the department for a term of not more than 5 years, except that licenses for overboard discharges may be issued for a term of not more than 10 years, as provided for in section 414-A, subsection 1-B, paragraph D. For the purposes of this section, "overboard discharge" is defined in accordance with section 466, subsection 9-A.

2-A. Relicensing. The relicensing of an existing licensed waste discharge prior to or after the expiration of the term of the existing license is subject to all of the requirements of this chapter. For the purposes of this chapter, the term "relicense" includes, without limitation, the terms "renewal," "renew," "reissue" and "extend." Relicensing of a waste discharge may be denied for the reasons set forth in section 341-D.

3. Inspection and records. Authorized representatives of the commissioner and the Attorney General have access at any reasonable time, to and through any premises where a discharge originates or is located or where required records are kept, including industrial users of publicly owned treatment works, for the purposes of inspection, testing and sampling. The department may order a discharger to produce and has the right to copy any records relating to the handling, treatment or discharge of pollutants and may require any licensee to keep such records relating to the handling, treatment or discharge of pollutants as the department determines necessary. The department also may order, in writing, a discharger or industrial user of publicly owned treatment works to produce such records, reports and other information as may reasonably be required in order to determine if that person is in violation of any law, order, rule, license, permit, approval or decision of the board or commissioner related to a wastewater discharge.

3-A. Inspection of overboard discharges. Except as provided in subsection 3-B, the department shall inspect all licensed overboard discharges. At least twice each calendar year, the department shall inspect all licensed overboard discharges operated on a year-round basis. At least once each calendar year, the department shall inspect all licensed overboard discharges operated no more than 6 months of a calendar year. The department shall assess the costs of inspection as an annual license fee payable by the license holder based on the adjusted gross income of the license holder on the most recent tax return under the federal Internal Revenue Code of 1986, as amended, according to the following schedule:

A. For residential overboard discharges:

(1) License holders with an adjusted gross income equal to or greater than $30,000 annually - $100;

(2) License holders with an adjusted gross income equal to or greater than $15,000 and less than $30,000 annually - $75;

(3) License holders with an adjusted gross income equal to or greater than $7,500 and less than $15,000 annually - $50; and

(4) License holders with an adjusted gross income less than $7,500 - no fee; and

B. For commercial overboard discharge license holders at all income levels - $100.

3-B. Waiver of inspection; reduced fees. Upon receipt of an annual assessment under subsection 3-A, a license holder may apply to the department for a waiver of the requirement of subsection 3-A. With the request for a waiver of the assessment, the license holder must file a copy of a private maintenance contract for the licensed overboard discharge, in effect for the assessment period, that provides for inspection of the discharge at least as frequently as required in subsection 3-A. The commissioner shall grant a waiver of the requirements of subsection 3-A with the following conditions:

A. The license holder shall file a copy of the results of each inspection with the department within 30 days after each inspection; and

B. The license holder shall pay an annual waiver fee of $30.

A license holder who is granted a waiver under this subsection and does not comply with the conditions of the waiver is required to pay the entire assessment under subsection 3-A for that year. In addition, the commissioner may not grant a waiver for the next year to that license holder. The commissioner may revoke the license as provided in the Maine Administrative Procedure Act if a license holder is granted a waiver but does not comply with the conditions of the waiver and

does not pay the assessment. Failure to pay the annual waiver fee or the assessment under subsection 3-A is a civil violation.

On or before January 1, 1993 the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters on the number of waivers granted and the compliance record of licensed overboard discharges operating under waivers in comparison with the compliance record of other licensed overboard discharges. The commissioner shall also report on the adequacy of the annual waiver fee to support the department's efforts to monitor the compliance of licensed overboard discharges that receive waivers under this subsection.

4. Schedule of fees for discharge licenses. [Repealed. Laws 1973, c. 712, § 6.]

5. Unlawful to violate license. After the issuance of a license by the department, it is unlawful to violate the terms or conditions of the license, whether or not such violation actually lowers the quality of the receiving waters below the minimum requirements of their classification.

6. Confidentiality of records. Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

7. Processing. [Repealed. Laws 1977, c. 300, §19]

8. Effect of license. Issuance of a license under this chapter does not convey any property right of any sort, or exclusive privilege. Except for toxic effluent standards and prohibitions imposed under the Federal Water Pollution Control Act, section 307, as amended, compliance with a license during its term constitutes compliance with this chapter. It is not a defense for a licensee in an enforcement action that it would have been necessary to halt or reduce the licensed activity in order to maintain compliance with the conditions of the license. The licensee shall take all reasonable steps to minimize or prevent any discharge in violation of a license which has a reasonable likelihood of adversely affecting human health or the environment.

§ 414-A. Conditions of licenses

1. Generally. The department shall issue a license for the discharge of any pollutants only if it finds that:

A. The discharge either by itself or in combination with other discharges will not lower the quality of any classified body of water below such classification;

B. The discharge either by itself or in combination with other discharges will not lower the quality of any unclassified body of water below the classification which the board expects to adopt in accordance with this subchapter;

C. The discharge either by itself or in combination with other discharges will not lower the existing quality of any body of water, unless, following opportunity for public participation, the

department finds that the discharge is necessary to achieve important economic or social benefits to the State and when the discharge is in conformance with section 464, subsection 4, paragraph F. The finding must be made following procedures established by rule of the board pursuant to section 464, subsection 4, paragraph F;

D. The discharge will be subject to effluent limitations that require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents that are discharged directly or indirectly into waters of the State. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources that the department determines are best calculated to protect and improve the quality of the receiving water and that are consistent with the requirements of the Federal Water Pollution Control Act, as amended, and published in 40 Code of Federal Regulations. If no applicable standards exist for a specific activity or discharge, the department must establish limits on a case-by-case basis using best professional judgment, after consultation with the applicant and other interested parties of record. In determining best practicable treatment for each category or class, the department shall consider the existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives; and

E. A pesticide discharge is unlikely to exert a significant adverse impact on nontarget species. This standard is only applicable to applications to discharge pesticides.

1-A. License for copper sulfate applications in public water supplies. The commissioner may issue licenses to treat public water supplies with copper sulfate or related compounds. The commissioner may not issue more than 2 consecutive licenses for the same body of water.

A. A license may only be issued if the Department of Human Services, Division of Health Engineering has determined that:

(1) An abundant growth of algae producing taste or odor exists to such a degree that the water supply is in danger of becoming unhealthful or unpalatable;

(2) The abundance of algae is a sporadic event. For purposes of this section, "sporadic" means occurring not more than 2 years in a row; and

(3) The algae cannot effectively be controlled by other methods.

B. Any license issued under this subsection is for one application or series of applications not to exceed 6 months, as provided in the terms of the license.

C. The commissioner shall impose all conditions necessary to meet the requirements of this section and all other relevant provisions of law.

D. Repealed. Laws 1997, c. 794, § A-23]

1-B. Relicensing of overboard discharges. The following provisions shall govern the relicensing of overboard discharges.

A. The department shall find that the discharge meets the requirements of best practicable treatment under this section for purposes of relicensing, when it finds that there are no technologically proven alternative methods of wastewater disposal consistent with the plumbing

code adopted by the Department of Human Services pursuant to Title 22, section 42, that will not result in an overboard discharge.

B. For the purposes of this subsection, the department may not require the installation or use of wastewater holding tanks as a "technologically proven alternative method of wastewater disposal" except in the following cases:

(1) Seasonal residential overboard discharges that are located on the mainland or on any island connected to the mainland by vehicle bridge or by scheduled car ferry service;

(2) All overboard discharges located within the boundaries of a sanitary or sewer district when the district has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the district's services who are physically connected to the sewers of the district; and

(3) All overboard discharges located within the municipality when the municipality has agreed to service and maintain the holding tank at an annual fee that does not exceed those fees charged to other similar users of the municipality's services who are physically connected to the sewers of the municipality.

C. The department shall issue a conditional permit to any applicant denied a license for an overboard discharge under this subsection. The term of the permit extends until 6 months after the commissioner offers a grant to the applicant for the costs of replacing the overboard discharge under the provisions of section 411-A.

D. Until the State receives authority to issue permits under the Federal Water Pollution Control Act, the department shall limit to a maximum of 10 years the term of any overboard discharge license or conditional permit, including relicensings, issued after June 1, 1987. For the purposes of this section, "overboard discharge" is defined in accordance with section 466, subsection 9-A. All licenses in existence on June 1, 1987, with expiration dates occurring in 1989 or 1990, expire on the date stated in the license. All other licenses in existence on June 1, 1987 expire on the same day and month stated in the existing license but in a new year, determined by the following schedule:

Current Expiration Date	New Date
1991, 1992	1990
1993, 1994	1991
1995, 1996	1992
1997, 1998	1993

After the State receives authority to issue permits under the Federal Water Pollution Control Act, the term of any overboard discharge license or conditional permit may not be more than 5 years.

E. At the time of each relicensing of an overboard discharge, the department shall impose all conditions necessary to meet the requirements of this section and all other relevant laws.

1-C. License for the use of algicides in Class GPA waters. The commissioner may issue a license to a municipality for the discharge of copper compounds or other materials registered by the Department of Agriculture, Food and Rural Resources to control excessive algae growth in Class GPA waters when the commissioner has determined that:

A. A lake restoration plan to reduce algae growth has been designed and implemented in cooperation with the department;

B. That plan has been found by the department to have failed to achieve the desired level of restoration in a reasonable period of time;

C. Because of technical or financial limitations, there is no further plan for restoration;

D. The affected water has a recent history of severe algae blooms of less than one meter Secchi disk transparency;

E. A watershed plan to further reduce phosphorus loading to the affected water is being implemented by responsible parties including the department and all affected municipalities; and

F. The Department of Inland Fisheries and Wildlife has found that the discharge will not have an adverse impact on the fishery management plan of that water body.

This license allows for no more than one application of copper compounds or other registered algicides per year for a period not to exceed 5 years. Algicides must be applied in an amount and in a manner that minimizes risk to nontarget organisms. The individual conducting the treatment must be certified by the Board of Pesticides Control for the use of aquatic pesticides. Application of an algicide may only occur after the Secchi disk transparency of the water is less than 2 meters. Relicensing is contingent upon an assessment of the water quality and the effectiveness of the phosphorus reduction plan for the watershed.

2. Schedules of compliance. Within the terms and conditions of a license, the department may establish a schedule of compliance for a final effluent limitation based on a water quality standard adopted after July 1, 1977. When a final effluent limitation is based on new or more stringent technology-based treatment requirements, the department may establish a schedule of compliance consistent with the time limitations permitted for compliance under the Federal Water Pollution Control Act, Public Law 92-500, as amended. A schedule of compliance may include interim and final dates for attainment of specific standards necessary to carry out the purposes of this subchapter and must be as short as possible, based on consideration of the technological, economic and environmental impact of the steps necessary to attain those standards.

3. Federal law. When the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under Section 402(c)(1) of the Federal Water Pollution Control Act, as amended, the department shall refuse to issue a license for the discharge of pollutants which it finds would violate the provisions of any federal law relating to water pollution control, anchorage or navigation or regulations enacted pursuant thereto. Any license issued under this chapter after this determination must contain provisions, including effluent limitations, that the department determines necessary to carry out the purposes of this subchapter and any federal laws or regulations.

Notwithstanding the foregoing, the department is authorized to issue licenses containing a variance from thermal effluent limitations, or from applicable compliance deadlines to accommodate an innovative technology. The variances may be granted only in accordance with the Federal Water Pollution Control Act, Sections 316 and 301(k), as amended, and applicable regulations.

4. License conditions affecting bypasses. In fashioning license decisions and conditions, the department shall consider the extent to which operation of the licensed facility will require an allowance for bypass of wastewater from any portion of a treatment facility when necessary for essential maintenance to assure efficient operation of the licensed facility, when unavoidable to prevent loss of life, personal injury or severe property damage and otherwise subject to applicable effluent limitations and standards. When the applicant demonstrates to the department that, consistent with best practical treatment requirements and other applicable standards, reasonably

controlled and infrequent bypasses will be necessary for this purpose, and there is no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal equipment downtime, the department shall fashion appropriate license allowances and conditions.

5. Modification, reopening and revocation. The following actions may be taken to reopen, modify or revoke and reissue waste discharge licenses. All actions taken under this subsection must be with notice to the licensee and all other interested parties of record and with opportunity for hearing. Actions may be appealed as set forth in sections 341-D and 346.

A. The department may reopen a license to add or change conditions or effluent limitations for toxic compounds identified in 40 Code of Federal Regulations, Section 401 or to include schedules of compliance to implement industrial pretreatment rules adopted by the board. Additionally, at the time of license issuance, the department may include as a condition of a license a provision for reopening the license for inclusion or change of specific limitations when facts available upon issuance indicate that changed circumstances or new information may be anticipated.

B. A request for modification of a license may be made by the licensee for any valid cause or changed circumstance. The department may initiate a license modification:

(1) When necessary to correct legal, technical or procedural mistakes or errors;

(2) When there has been or will be a substantial change in the activity or means of treatment that occurred after the time the license was issued;

(3) When new information other than revised rules, guidance or test methods becomes available that would have justified different conditions at the time the license was issued;

(4) When a pollutant not included in the license may be present in the discharge in quantities sufficient to require treatment, such as when the pollutant exceeds the level that can be achieved by the technology-based treatment standards appropriate to the licensee, or contribute to water quality violations;

(5) When necessary to remove net limits based on pollutant concentration in intake water when the licensee is no longer eligible for them, consistent with federal law;

(6) When necessary to make changes necessary as a result of the failure of one state to notify another state whose waters may be affected by a discharge; or

(7) When necessary to include pretreatment compliance schedules required pursuant to federal law.

C. Notwithstanding Title 5, section 10051, the board may modify, revoke or suspend a license when the board finds that any of the conditions specified in section 341-D, subsection 3 exist or upon application for transfer of a license.

§ 414-B. Publicly owned treatment works

1. Definition. "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

2. Pretreatment standards. The department may establish pretreatment standards for the introduction into publicly owned treatment works of pollutants that interfere with, pass through or otherwise are incompatible with those treatment works. In addition, the department may establish

pretreatment standards for designated toxic pollutants that may be introduced into a publicly owned treatment works. In order to assume and properly administer the authority to issue and enforce permits under the Federal Water Pollution Control Act, the department may adopt such regulations as necessary, provided that the rules comply with the Federal Water Pollution Control Act or 40 Code of Federal Regulations, Part 403.

The department may require that any license for a discharge from a publicly owned treatment works include conditions to require the identification of pollutants, in terms of character and volume, from any significant source introducing pollutants subject to pretreatment standards, and to assure compliance with these pretreatment standards by each of these sources.

2-A. Prohibited discharge through publicly owned treatment works. The discharge to a publicly owned treatment works of any pollutant that interferes with, passes through or otherwise is incompatible with these works, or that is a designated toxic pollutant, is prohibited unless in compliance with pretreatment standards established for the applicable class or category of discharge. Violation of the terms and conditions of local pretreatment regulations or a user contract, permit or similar agreement between an industrial user and the owner of a publicly owned treatment works is prohibited. A violation may be enforced by the State or the owner of the treatment works or through joint action.

3. User charges. The department may impose as a condition in any license for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by users of such treatment works with any system of user charges required by state or federal law or regulations promulgated thereunder.

4. Acceptance of wastewater. Municipal and quasi-municipal wastewater treatment facilities constructed wholly or in part with funding allocated pursuant to section 411 shall accept for treatment holding tank wastewater from any watercraft sewage pump-out facilities required pursuant to section 423-B. Municipal and quasi-municipal wastewater treatment facilities may charge an annual or per visit fee for this service to be approved by the commissioner.

§ 414-C. Color pollution control

1. Color pollution control; finding. The Legislature finds that further, rigorous control of color, odor and foam pollutants is consistent with modernization of the State's kraft pulp industry and that process technologies to accomplish this objective will enhance the competitive position of this industry.

2. Best practicable treatment; color pollution. For the purposes of section 414-A, subsection 1, paragraph D, "best practicable treatment" for color pollution control for discharges of color pollutants from the kraft pulping process is:

A. For discharges licensed and in existence prior to July 1, 1989:

(1) On July 1, 1998 and until December 31, 2000, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

(2) On and after January 1, 2001, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

B. For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis.

A discharge from a kraft pulp mill that is in compliance with this subsection is exempt from the provisions of subsection 3.

3. Instream color pollution standard. An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. This subsection applies to all flows greater than the minimum 30-day low flow that can be expected to occur with a frequency of once in 10 years. A discharge that is in compliance with this subsection is exempt from the provisions of subsection 2, paragraph A. Such a discharge may not exceed 175 pounds of color pollutants per ton of unbleached pulp produced after January 1, 2001.

4. Schedule of compliance. [Repealed. Laws 1997, c. 444, §3]

4-A. Compliance deadlines. [Repealed. Laws 1997, c. 444, §4]

4-B. Progress report. [Repealed. 1997, c. 444, §4]

4-C. Color reduction evaluation. If a discharge is not in compliance with either subsection 2 or 3 after January 1, 2001, the kraft pulp mill with a noncompliant discharge shall evaluate the potential for further color reductions. This evaluation must include the identification of each internal source of color, the contribution of color from each internal source, the options available for further color reductions for each internal source, the cost of these options for each internal source, the estimated final color discharge after implementation of the options given in pounds of color per ton of unbleached product and an assessment of the final impact on the in-stream color after implementation of the options including the amount of change expressed in color pollution units. This evaluation must be submitted to the commissioner for review no later than July 1, 2001 and by September 1, 2001 the commissioner shall modify the license to provide for a mill-specific best practicable treatment and compliance schedule.

5. Interstate waters. For the purposes of the commissioner's responsibilities under the Federal Water Pollution Control Act, Public Law 92-500, Section 401(a)(2), as amended, the commissioner shall find that the discharge of color pollution in excess of the standard established under subsection 2, paragraph A, into any surface water that subsequently enters the State affects the quality of the State's waters so as to violate the water quality requirements of the State.

6. Monitoring established. The commissioner shall incorporate as part of the department's ongoing water quality monitoring program, monitoring of color, odor and foam pollutants.

§ 417. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity may place, deposit or discharge, directly or indirectly into the inland waters or tidal waters of this State, or on the ice thereof, or on the banks thereof in such a manner that it may fall or be washed into these waters, or in such a manner that the drainage from any of the following may flow or leach into these waters, except as otherwise provided by law:

1. Forest products refuse. Any slabs, edgings, sawdust, shavings, chips, bark or other forest products refuse;

2. Potatoes. Any potatoes or any part or parts of potatoes; or

3. Refuse. Any scrap metal, junk, paper, garbage, septic tank sludge, rubbish, old automobiles or similar refuse.

This section does not apply to solid waste disposal facilities in operation on July 1, 1977, owned by a municipality or quasi-municipal authority if the operation and maintenance of the facility has been or is approved by the department pursuant to the requirements of chapter 13 and the rules adopted thereunder.

§ 417-A. Manure spreading

Notwithstanding Title 7, section 4207, when the ground is frozen, a person may not spread manure on agricultural fields within a great pond watershed unless this activity is in accordance with a conservation plan for that land on file with a state soil and water conservation district.

§ 418. Log driving and storage

1. Prohibitions. No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of this State for the purpose of driving the logs or pulpwood to pulp mills, lumber mills or any other destination, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood on the ice of any inland waters of this State, except to transport logs or pulpwood from islands to the mainland.

No person, firm, corporation or other legal entity may place logs or pulpwood into the inland waters of this State for the purpose of storage or curing the logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, without a permit from the department as described in subsection 2.

2. Storage; permit. Whoever proposes to use the inland waters of this State for the storage or curing of logs or pulpwood, or for other purposes incidental to the processing of forest products, or to transport logs or pulpwood from islands to the mainland, shall apply to the department for a permit for that use. Applications for these permits must be in a form prescribed by the commissioner.

If the department finds, on the basis of the application, that the proposed use will not lower the existing quality or the classification, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein, and that inability to conduct that use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as, in its judgment, may be necessary to protect the quality, standards and rights.

In the event the department determines it necessary to solicit further evidence regarding the proposed use, it shall schedule a public hearing on the application.

At that hearing the department shall solicit and receive testimony concerning the nature and extent of the proposed use and its impact on existing water quality, water classification standards and the public rights of fishing and navigation and the economic implications upon the applicant of the use. If, after hearing, the department determines that the proposed use will not lower the existing quality or the classification standards, whichever is higher, of any waters, nor adversely affect the public rights of fishing and navigation therein and that inability to conduct the use will impose undue economic hardship on the applicant, it shall grant the permit for a period not to exceed 5 years, with such terms and conditions as in its judgment may be necessary to protect the quality, standards and rights.

3. Exception. [Repealed. Laws 1973, c. 422]

§ 418-A. Protection of the lower Penobscot River

1. Findings. The Legislature finds that the lower Penobscot River is a unique and valuable natural resource. The lower Penobscot River serves as an example to the Nation that good public policy carefully implemented can restore and preserve our natural resources. The river has supported, and is again beginning to support, the greatest run of Atlantic salmon in North America,

providing a unique fishing opportunity for Maine residents. The Legislature declares that the preservation and restoration of the lower Penobscot River is of the highest priority.

2. Prohibition. To protect water quality and aquatic resources, fisheries and fishing opportunities, and as an exercise of the public trust of the State, no person, firm, corporation, municipality or other legal entity may erect, operate, maintain or use any dam on that portion of the Penobscot River downstream from the Bangor Hydroelectric Company Dam located at Veazie to the southernmost point of Verona Island for any purpose not previously authorized by act, resolve or operation of law, unless specifically authorized by the Legislature.

3. Study authorized. Any person, firm, corporation, municipality or other legal entity may study the feasibility of erecting, operating, maintaining or using a dam for hydroelectric generation on the portion of the Penobscot River described in subsection 2.

§ 419. Cleaning agents containing phosphate banned

1. Definitions.

A. "Dairy equipment", as used in this section, means equipment used by farmers or processors for the manufacture or processing of milk and dairy products.

B. "Food processing equipment", as used in this section, means equipment used for the processing and packaging of food for sale, except that equipment used at restaurants and similar places of business shall not be included within the meaning of "food processing equipment."

C. "High phosphorous detergent", as used in this section, means any detergent, presoak, soap, enzyme or other cleaning agent containing more than 8.7% phosphorous, by weight, but does not include detergent having a recommended use level which contains less than 7 grams of phosphorous by weight.

C-1. "Household laundry detergent" as used in this section means a cleaning agent used primarily in private residences for washing clothes.

D. "Industrial equipment", as used in this section, means equipment used by industrial concerns which concerns are located on any brook, stream or river.

E. "Person", as used in this section, means any individual, firm, association, partnership, corporation, municipality, quasi-municipal organization, agency of the State or other legal entity.

2. Prohibition. No person may sell or use any high phosphorous detergent.

2-A. Household laundry detergent. After July 1, 1993, a person may not sell or offer for sale in this State a household laundry detergent that contains more than 0.5% phosphorus by weight expressed as elemental phosphorus.

3. Exception. Subsection 2 shall not apply to any high phosphorous detergent sold and used for the purpose of cleaning dairy equipment, food processing equipment and industrial equipment.

4. Penalty. [Repealed. Laws 1977, c. 300, § 23]

§ 419-A. Prohibition on the use of tributyltin as an antifouling agent

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. [Repealed. T. 38, §419-A, sub-§1, paragraph A]

A-1. "Acceptable release rate" means a measured release rate equal to or less than 4.0 micrograms per square centimeter per day at steady state conditions determined in accordance with federal Environmental Protection Agency testing procedures on tributyltin in antifouling paints under the Federal Insecticide, Fungicide and Rodenticide Act.

B. "Antifouling paint" means a compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

C. "Commercial boatyard" means:

(1) A facility that engages for hire in the construction, storage, maintenance, repair or refurbishing of vessels; or

(2) An independent marine maintenance contractor who engages in any of the activities listed in subparagraph (1).

D. "Trap dip" means a liquid antifouling agent or preservative with which wooden lobster traps are treated.

E. "Tributyltin compound" means any organotin compound that has 3 normal butyl groups attached to a tin atom, with or without an anion, such as chloride, fluoride or oxide.

F. "Vessel" means a watercraft or other conveyance used as a means of transportation on water, whether self-propelled or otherwise. This definition includes barges and tugs.

2. Prohibition on use. Prohibition on use includes the following.

A. Except as provided in subsection 3, a person may not distribute, possess, sell, offer for sale, apply or offer for application any antifouling paint or trap dip containing a tributyltin compound.

B. No person may distribute, possess, sell, offer for sale, apply or offer for application any substance that contains a tributyltin compound in concentrated form that is labeled for mixing with paint or solvents to produce an antifouling paint for use on vessels, wooden lobster traps, fishing gear for marine waters, floats, moorings or piers.

C. The Board of Pesticides Control is the enforcement agency for this section. The Board of Pesticides Control shall make available a list of paints with acceptable tributyltin release rates by January 1, 1988.

D. This section shall take effect on January 1, 1988.

3. Exceptions. Exceptions to the prohibition are as follows.

A. A person may distribute or sell an antifouling paint containing a tributyltin compound with an acceptable release rate to the owner or agent of a commercial boatyard. The owner or agent of a commercial boatyard may purchase, possess and apply an antifouling paint containing tributyltin compounds with an acceptable release rate, if the antifouling paint is applied only within a commercial boatyard and is applied only to vessels exceeding 25 meters in length or that have aluminum hulls.

B. This section does not prohibit the sale, application or possession of an antifouling paint containing a tributyltin compound, if the antifouling paint is in a spray can of 16 ounces or less, is commonly referred to as an outboard or lower drive unit paint and has an acceptable release rate.

§ 420. Certain deposits and discharges prohibited

No person, firm, corporation or other legal entity shall place, deposit, discharge or spill, directly or indirectly, into the ground water, inland surface waters or tidal waters of this State, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters, any of the following substances:

1-A. Mercury. Mercury or any compound containing mercury, whether organic or inorganic, as provided in this subsection.

A. After October 1, 2001, a person, firm, corporation or other legal entity may not discharge mercury or any compound containing mercury, whether organic or inorganic, in any concentration that increases the natural concentration of mercury in the receiving waters.

B. Until October 1, 2001, a person, firm, corporation or other legal entity may not discharge mercury or any compound containing mercury in a concentration greater than the concentration discharged as of the effective date of this paragraph.

The department shall establish interim discharge limits, based on procedures specified in rule, for each facility licensed under section 413 and subject to this paragraph. The discharge limits may not be less stringent statistically than the facility's discharge levels as of the effective date of this paragraph, except that the department shall take into account factors such as reduction in flow due to implementation of a wastewater conservation plan, seasonal variations and changes in levels of production. When the department has established an interim discharge limit for a facility, that limit is deemed to be the concentration discharged as of the effective date of this paragraph, and a facility shall comply with that interim discharge limit.

When considering an enforcement action in response to a violation of this paragraph before the department establishes an interim discharge limit for the facility, the commissioner shall consider factors such as reduction in flow due to implementation of a wastewater conservation plan, seasonal variations and changes in levels of production.

A person, firm, corporation or other legal entity that discharges mercury shall implement a mercury pollution prevention plan consistent with model plans developed by the department. The facility shall provide information concerning the status of implementation of the mercury pollution prevention plan to the department by December 15, 1999 and December 15, 2000. A mercury pollution prevention plan must include monitoring for mercury as required by the department, and the monitoring information must be provided to the department.

This paragraph is repealed October 1, 2001.

C. A person, firm, corporation or other legal entity who, on January 1, 1971, was discharging any of the substances mentioned in this subsection in connection with an industrial process and, on or before December 31, 1971, filed with the board a statement indicating the amount of the substance so discharged on that date may not be considered in violation of this subsection as long as any discharge of mercury by that person, firm, corporation or other legal entity is less than 454 grams, or one pound, per year after January 1, 2000 and less than 45 grams, or 0.1 pound, per year after January 1, 2002. This paragraph is repealed January 1, 2004.

D. Notwithstanding this subsection, whenever the commissioner finds that a concentration of 10 parts per billion of mercury or greater is present in any waters of this State or that danger to public health exists due to mercury concentrations of less than 10 parts per billion in any waters of this State, the commissioner may issue an emergency order to all persons discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to

that described in section 347-A, subsection 3, and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3;

2. Toxic or hazardous substances. Any other toxic substance in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance, by the board. In identifying and regulating such toxic substances, the board shall take into account the toxicity of the substance, its persistence and degradability, the usual or potential presence of any organism affected by such substance in any waters of the State, the importance of such organism and the nature and extent of the effect of such substance on such organisms, either alone or in combination with substances already in the receiving waters or the discharge. As used in this subsection, "toxic substance" shall mean those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

A. Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State at the levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended.

B. The board may change the statewide criteria established under paragraph A for a particular toxic substance established pursuant to the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, as follows:

(1) By adopting site-specific numerical criteria for the toxic substance to reflect site-specific circumstances different from those used in, or any not considered in, the derivation of the statewide criteria. The board shall adopt site-specific numerical criteria only as part of a licensing proceeding pursuant to sections 413, 414 and 414-A; or

(2) By adopting alternative statewide criteria for the toxic substance. The alternative statewide criteria must be adopted by rule.

The board may substitute site-specific criteria or alternative statewide criteria for the criteria established in paragraph A only upon a finding that the site-specific criteria or alternative statewide criteria are based on sound scientific rationale and are protective of the most sensitive designated use of the water body, including, but not limited to, human consumption of fish and drinking water supply after treatment.

C. When surface water quality standards are not being met due to the presence of a toxic substance for which no water quality criteria have been established pursuant to the Federal Water Pollution Control Act, Section 304(a), as amended, the board shall:

(1) Adopt statewide numerical criteria by rule; or

(2) Adopt site-specific numerical criteria as part of a licensing proceeding under sections 413, 414 and 414-A.

Nothing in this section restricts the authority of the board to adopt, by rule, statewide or site-specific numerical criteria for toxic substances that are not presently causing water quality standards to be violated.

D. For any criteria established under this subsection, the board shall establish the acceptable level of additional risk of cancer to be borne by the affected population from exposure to the toxic substance believed to be carcinogenic.

E. In regulating substances that are toxic to humans, including any rulemaking to regulate these substances, the board shall consider any information provided by the Department of Human Services.

F. The Department of Human Services may request that the board adopt or revise the statewide or site-specific criteria for any toxic substance based on the need to protect public health. If the request is filed with the board, the board may propose a rule and initiate a rule-making proceeding. The board shall incorporate in its proposal for rulemaking under this paragraph the statewide or site-specific criteria recommended by the Department of Human Services.

G. Numeric water quality criteria for 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin established by the United States Environmental Protection Agency under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(a), as amended, do not apply until June 1, 1991, and only apply on that date if the board has not adopted through rulemaking or individual licensing proceedings under this section alternative numeric water quality criteria for 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin. Pursuant to section 414-A, subsection 2, the board shall establish schedules for compliance with criteria established under this section. These schedules must be consistent with the compliance deadlines established under the Federal Water Pollution Control Act, Public Law 92-500, Section 304(l), as amended.

H. Notwithstanding paragraphs D and G, the board may not adopt any numeric water quality criteria for, or acceptable level of additional cancer risk from exposure to, 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin prior to January 1, 1994.

I. Notwithstanding any other provision of this section, the following standards apply only to a bleach kraft pulp mill, referred to in this paragraph as a "mill."

(1) After July 31, 1998, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency.

(2) After December 31, 1999, a mill may not have a detectable quantity of 2, 3, 7, 8 - tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The commissioner may extend this time frame up to 6 months for a mill if the commissioner determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. For purposes of compliance, the detection level is 10 picograms per liter, unless the department adopts a lower level of detection by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency. If a mill fails to achieve this requirement, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the commissioner within 6 months of the date of confirmatory sampling and include a timetable for implementation, acceptable to the

commissioner, with an implementation date no later than December 31, 2002. The commissioner may establish a procedure for confirmatory sampling.

(3) After December 31, 2002, a mill may not discharge dioxin into its receiving waters. For purposes of this subparagraph, a mill is considered to have discharged dioxin into its receiving waters if 2, 3, 7, 8 - tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8 - tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant and in a confirmatory sample at levels exceeding 10 picograms per liter, unless the department adopts a lower detection level by rule, which is a routine technical rule pursuant to Title 5, chapter 375, subchapter II-A, or a lower detection level by incorporation of a method in use by the United States Environmental Protection Agency, or if levels of dioxin, as defined in section 420-A, subsection 1 detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure acceptable to the commissioner. The commissioner shall consult with the technical advisory group established in section 420-B, subsection 1, paragraph B, subparagraph (5) in making this determination and in evaluating surrogate procedures. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-tissue sampling-result requirements in this subparagraph and does not demonstrate by December 31, 2003 to the commissioner's satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the commissioner may pursue any remedy authorized by law.

(4) For purposes of documenting compliance with subparagraphs (1) to (3) the internal waste stream of a bleach plant must be sampled twice per quarter by the mill. The department may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3rd-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the department for informational purposes the actual laboratory results including sample detection limits on a frequency to be established by the commissioner.

The commissioner shall assess the mill for the costs of any sampling performed by the department and any analysis performed for the department under this paragraph and credit funds received to the Maine Environmental Protection Fund.

The commissioner may reduce the frequency of sampling required by a mill after 3 consecutive years of sampling have demonstrated the mill does not have a detectable quantity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin or 2, 3, 7, 8-tetrachlorodibenzo-p-furan.

3. Radiological, chemical or biological warfare agents. Radiological, chemical or biological warfare agents or high level radioactive wastes.

§ 420-A. Dioxin monitoring program

In order to determine the nature of dioxin contamination in the waters and fisheries of the State, the commissioner shall conduct a monitoring program as described in this section.

1. Dioxin defined. As used in this section, the term "dioxin" means any polychlorinated dibenzo-para-dioxins, PCDD's, and any polychlorinated dibenzo-para-furans, PCDF's.

2. Monitoring locations and subjects. The commissioner shall:

A. Select a representative sample of wastewater treatment plant sludges from municipal wastewater treatment plants, bleached pulp mills or other sources. These facilities must be selected on the basis of known or likely dioxin contamination of their discharged effluent. The commissioner shall develop a monitoring plan for these facilities and submit the plan, including a list of the selected facilities, to the technical advisory group established in section 420-B, subsection 1, paragraph B, subparagraph (5). At least 30 days prior to submitting the plan to the technical advisory group, the commissioner shall notify the owners or operators of each selected facility of the fact of the facility's inclusion in the plan. The technical advisory group shall review the plan and information related to the plan provided by the commissioner, by the owners or operators of selected facilities and by others, including information regarding whether the selected facilities are known or likely sources of dioxin contamination. The technical advisory group shall advise the commissioner on the plan and the choice of selected facilities. The total number of facilities monitored by the commissioner may not exceed 12;

B. Sample and test the sludge of these facilities for dioxin contamination at least once during each season of the year. The commissioner shall specify which congeners of dioxin will be analyzed; and

C. Sample and test for dioxin contamination a selection of fish representative of those species present in the receiving waters. Sufficient numbers of fish must be analyzed to provide a reasonable estimate of the level of contamination in the population of each water body affected.

3. Coordination of monitoring. The commissioner shall coordinate the monitoring program established under this section with other dioxin monitoring programs conducted by the department, the United States Environmental Protection Agency or dischargers of wastewater. The commissioner shall seek to integrate the results of these other programs, as relevant, into the reports required by this section.

4. Report. The commissioner shall report by March 31st of each year on the results of the monitoring program to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The annual report must contain the commissioner's conclusions as to the levels of dioxin contamination in the sample subjects and the likely scope of dioxin contamination in the State's waters. The report must also contain an evaluation of the department's progress toward establishing a fish-tissue sampling test as required in section 420, subsection 2, including selection of reference sites, methods of sample standardization and the levels of detection and statistical confidence limits.

5. Fees assessed. The commissioner shall assess the selected facilities for the costs of sample collection and analysis, except that, if the selected facility is a publicly owned treatment works, the commissioner may assess the primary industrial generator discharging effluent into the treatment facility if the generator is known or likely to be discharging dioxin into the treatment facility. Fees received under this section must be credited to the Maine Environmental Protection Fund. Payment of these fees is a condition of the discharge license issued under this Title for continued operation of the selected facilities, except that, if the selected facility is a publicly owned treatment works and the commissioner assesses the fee on an industrial generator, payment of the fee is not a condition of the discharge license of the selected facility. The fees assessed under this subsection may not exceed a total of $250,000 in any fiscal year.

6. Repeal. This section is repealed December 31, 2002.

§ 420-B. Surface water ambient toxic monitoring program

The discharge of pollutants from certain direct and indirect sources into the State's waters introduces toxic substances, as defined under section 420, into the environment. In order to determine

the nature, scope and severity of toxic contamination in the surface waters and fisheries of the State, the commissioner shall conduct a scientifically valid monitoring program.

The program must be designed to comprehensively monitor the lakes, rivers and streams and marine and estuarine waters of the State on an ongoing basis. The program must incorporate testing for suspected toxic contamination in biological tissue and sediment, may include testing of the water column and must include biomonitoring and the monitoring of the health of individual organisms that may serve as indicators of toxic contamination. This program must collect data sufficient to support assessment of the risks to human and ecological health posed by the direct and indirect discharge of toxic contaminants.

1. Development of monitoring plans and work programs. The commissioner shall:

A. Prepare a plan every 5 years that outlines the monitoring objectives for the following 5 years, resources to be allocated to those objectives and a plan for conducting the monitoring, including methods, scheduling and quality assurance; and

B. Prepare a work program each year that defines the work to be conducted that year toward the objectives of the 5-year plan. This work program must identify specific sites, the sampling media and the contaminants that will be tested.

(1) The commissioner shall consider the following factors when selecting monitoring sites for the annual work program:

(a) The importance of the water body to fisheries, wildlife and humans;

(b) Known or likely sources of contamination and their relative risk to human or ecological health;

(c) The existence of pending waste discharge licenses affecting the water body;

(d) The availability of reference sites that are relatively unaffected by human activity;

(e) Anticipated improvement or degradation of the water body; and

(f) The availability of current, valid data from other sources on the level of toxic contamination of the water body.

(2) The commissioner shall incorporate the following types of testing in the program:

(a) Monitoring of toxic contaminant levels in biological tissue and water body sediments, and monitoring of the water column may be included;

(b) Analysis of the resident biological community in the monitored water body; and

(c) Monitoring of the health of individual organisms that may serve as indicators of toxic contamination.

(3) When selecting the specific toxic substances to be monitored in the annual program, the commissioner shall consider:

(a) Toxic substances that have the potential to affect human or ecological health at expected concentrations:

(b) Toxic substances from both natural and human sources;

(c) Toxic substances that serve as tracers for human sources of pollution;

(d) Toxic substances or measures of contamination that may be more cost-effective indicators of other toxic substances; and

(e) Toxic substances for which there are analytical test methods approved by the United States Environmental Protection Agency or, where such methods have not been approved, for which the commissioner determines, with the assistance of the technical advisory group established under this section, that proven, reliable methods have been established.

The commissioner shall include in the annual work program a written statement providing the factual basis for the selection of the specific toxic substances to be monitored. Prior to implementation of the annual work program, the toxic substances to be monitored and, if not approved by the United States Environmental Protection Agency, the analytical test methods to be used must be approved by the technical advisory group by a 2/3 vote.

(4) When determining the intensity of the monitoring effort in the annual program, the commissioner shall consider:

(a) The potential for annual variation in toxic contamination at a monitoring site;

(b) The degree of homogeneity in the materials to be sampled; and

(c) The uncertainty in observations due to possible systematic and analytic error.

(5) A technical advisory group composed of 11 individuals is established. The commissioner shall appoint 2 members with scientific backgrounds in toxic contamination or monitoring, ecological assessment or public health from each of the following interests: business, municipal, conservation, public health and academic interests. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint as a nonvoting member one Legislator who serves on the joint standing committee of the Legislature having jurisdiction over natural resource matters. The commissioner shall appoint the chair from among the voting members. A quorum of 6 voting members must be present for the conduct of business. Members do not receive compensation or reimbursement for expenses.

The members appointed by the commissioner serve for terms of 3 years except that, for the initial appointments, 2 members serve terms of one year, 4 members serve terms of 2 years and 4 members serve terms of 3 years. The Legislator serves for the duration of the Legislature to which the Legislator is elected.

The group shall advise the commissioner during the development of the 5-year monitoring plan and the annual work programs.

2. Data management. The commissioner shall maintain data collected under this section in a manner consistent with standards established under Title 5, chapter 158, subchapter II-A for the State's geographic information system. All data is available to the public.

3. Coordination of monitoring. The commissioner shall coordinate the monitoring program established under this section with other toxics monitoring programs conducted by the department, the United States Environmental Protection Agency and other federal agencies or dischargers of wastewater.

4. Report. No later than March 31st of each year, the commissioner shall report on the monitoring program to the joint standing committee of the Legislature having jurisdiction over natural resource matters. This report must contain:

A. At the start of each 5-year period, the 5-year monitoring plan;

B. The annual work program for the past year and the current year;

C. The commissioner's conclusions as to the levels of toxic contamination in the State's waters and fisheries;

D. Any trends of increasing or decreasing levels of contaminants found; and

E. The report on the results of the dioxin monitoring program required under section 420-A, subsection 4.

§ 420-C. Erosion and sedimentation control

A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.

This section applies to a project or any portion of a project located within an organized area of this State. This section does not apply to agricultural fields. Forest management activities, including associated road construction or maintenance, conducted in accordance with applicable standards of the Maine Land Use Regulation Commission, are deemed to comply with this section. This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

§ 420-D. Storm water management

A person may not construct, or cause to be constructed, a project that includes 20,000 square feet or more of impervious area or 5 acres or more of disturbed area in the direct watershed of a body of water most at risk from new development or one acre or more of impervious area or 5 acres or more of disturbed area in any other area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department. This section applies to a project or any portion of a project that is located within an organized area of this State.

1. Standards. The department shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed. Storm water quality standards apply only in the direct watersheds of waterbodies most at risk from development and in sensitive or threatened geographic regions or watersheds defined by the department under subsection 4. Until such regions are defined, storm water quality standards are not required to be met by a permit applicant.

2. Review. If the applicant is able to meet the standards for storm water using solely vegetative means, the department shall review the application within 30 calendar days. If structural means are used to meet those standards, the department shall review the application within 60 calendar days. The review period begins upon receipt of a complete application and may be extended pursuant to section 344-B or if a joint order is required pursuant to subsection 5. The department may request additional information necessary to determine whether the standards of this section are met. The application is deemed approved if the department does not notify the applicant within the applicable review period.

The department may allow a municipality or a quasi-municipal organization, such as a watershed management district, to substitute a management system for storm water approved by the department for the permit requirement applicable to projects in a designated area of the municipality. The municipality or quasi-municipality may elect to have this substitution take effect at the time the system is approved by the department, or at the time the system is completed as provided in an implementation schedule approved by the department.

3. Watersheds of bodies of water most at risk. The department shall establish by rule a list of watersheds of bodies of water most at risk from new development. In regard to lakes, the list must include, but is not limited to, public water supply lakes and lakes identified by the department as in violation of class GPA water quality standards or as particularly sensitive to eutrophication based on current water quality, potential for internal recycling of phosphorus, potential as a cold water fishery, volume and flushing rate or projected growth rate in a watershed. The department shall review and update the list as necessary. A municipality within the watershed of a body of water most at risk may petition the department to have the body of water added to or dropped from the list.

4. Sensitive or threatened regions or watersheds. The department shall establish by rule a list of sensitive or threatened regions or watersheds. These areas include the watersheds of surface waters that:

A. Are susceptible to degradation of water quality or fisheries because of the cumulative effect of reasonably foreseeable levels of development activity within the watershed of the affected surface waters; and

B. Are not classified as "watersheds of bodies most at risk" under subsection 3.

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development, unless the project requires review solely as a development that generates 100 or more passenger car equivalents at peak hour; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; and sections 631 to 636, permits for hydropower projects. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

6. Urbanizing areas. The department shall work with the State Planning Office to identify urban bodies of water most at risk and incorporate model ordinances protective of these bodies of water into assistance provided to local governments.

7. Exemptions. The following exemptions apply.

A. Forest management activities, including associated road construction or maintenance, do not require review pursuant to this section if any road construction is used primarily for forest management activities and is not used primarily to access development.

B. Disturbing areas for the purpose of normal farming activities, such as clearing of vegetation, plowing, seeding, cultivating, minor drainage and harvesting, does not require review pursuant to this section.

C. If the commissioner determines that a municipality's ordinance meets or exceeds the provisions of this section and that the municipality has the resources to enforce that ordinance, the commissioner shall exempt any project within that municipality. The department shall

maintain a list of municipalities meeting these criteria and update this list at least every 2 years. If a municipality on the list no longer meets these criteria, it must be removed from the list. A project constructed after a municipality is removed from the list must obtain approval pursuant to this section.

D. Construction projects at industrial facilities for which a federal storm water permit application has been made or construction projects at facilities for which storm water is regulated under an existing federal discharge permit do not require review pursuant to this section.

E. Impervious and disturbed areas associated with construction or expansion of a single-family, detached residence on a parcel do not require review pursuant to this section.

F. Waste facilities regulated by the department under section 1310-N, 1319-R or 1319-X do not require review under this section. This exemption applies to new facilities, modifications of facilities, transfers of facilities and relicensing of facilities.

G. Projects involving roads, railroads and associated facilities conducted by or under the supervision of the Department of Transportation or the Maine Turnpike Authority, do not require review under this section as long as the projects are constructed pursuant to storm water quality and quantity standards set forth in a memorandum of agreement between the department and the conducting or supervising agency and the project does not require review under article 6. A memorandum of agreement described in this paragraph must be updated whenever the rules concerning storm water management adopted by the department are finalized or updated.

8. Enforcement. Any activity that takes place contrary to the provisions of a valid permit issued under this article or without a permit having been issued for that activity is a violation of this article. Each day of a violation is a separate offense. A finding that any such violation has occurred is prima facie evidence that the activity was performed or caused to be performed by the owner of the property where the violation occurred. Prior to July 1, 1998, the department may not seek to impose civil or criminal penalties for a violation of this section against any person who has made a good faith effort to comply.

9. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

10. Fees. An applicant for a permit under this section shall pay a fee to the department as follows.

A. When a permit is required because of the size of the proposed impervious area, the following fees apply.

(1) If structural means of storm water control are used, the fee is $500 for from 20,000 square feet up to one acre of impervious area, plus $250 for each additional whole acre of impervious area.

(2) If solely vegetative means of storm water control are used, the fee is $250 for from 20,000 square feet up to one acre of impervious area, plus $125 for each additional whole acre of impervious area.

B. When a permit is required because of the size of the proposed disturbed area, the following fees apply.

(1) If structural means of storm water control are used, the fee is $500 for 5 acres, plus $250 for each additional whole acre of disturbed area.

(2) If solely vegetative means of storm water control are used, the fee is $250 for 5 acres, plus $125 for each additional whole acre of disturbed area.

C. When a permit by rule is required as provided by rules adopted by the department, the fee is $35.

If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the fee is reduced to $100 for from 20,000 square feet up to one acre of impervious area or 5 acres of disturbed area, plus $50 for each additional whole acre.

11. Compensation fee. The department may establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, as provided in this subsection.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

A. The department may allow an applicant with a project in the direct watershed of a lake to address certain on-site phosphorus reduction requirements through payment of a compensation fee as provided in this paragraph. The commissioner shall determine the appropriate compensation fee for each project. The compensation fee must be paid either into a compensation fund or to an organization authorized by the department and must be a condition of the permit.

(1) The department may establish a storm water compensation fund for the purpose of receiving compensation fees, grants and other related income. The fund must be a nonlapsing fund dedicated to payment of the costs and related expenses of compensation projects. Income received under this subsection must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by statute. Interest on these investments must be credited to the fund. The department may make payments from the fund consistent with the purpose of the fund.

(2) The department may enter into a written agreement with a public, quasi-public or private, nonprofit organization for purposes of receiving compensation fees and implementing compensation projects. If the authorized agency is a state agency other than the department, it shall establish a fund meeting the requirements specified in subparagraph (1). The authorized organization shall maintain records of expenditures and provide an annual summary report to the department. If the organization does not perform in accordance with this section or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this paragraph. If an organization's authorization is revoked, any remaining funds must be provided to the department.

(3) The commissioner may set a fee rate of no more than $10,000 per pound of available phosphorus, except that the commissioner may set a rate up to $20,000 per pound for a project located in the direct watershed of a severely blooming lake.

(4) Except in an urbanized part of a designated growth area, best management practices must be incorporated on site that, by design, will reduce phosphorus export by at least 50%, and a phosphorus compensation fee must be paid to address the remaining phosphorus reduction required to meet the parcel's phosphorus allocation. In an urbanized part of a

designated growth area, an applicant may pay a phosphorus compensation fee in lieu of part or all of the on-site phosphorus reduction requirement. The commissioner shall identify urbanized parts of designated growth areas in the direct watersheds of lakes most at risk, in consultation with the State Planning Office.

(5) Projects funded through compensation fees as provided in this paragraph must be located in the same watershed as the project with respect to which the compensation fee is paid.

B. The department may allow an applicant with a project within the direct watershed of a coastal wetland, river, stream or brook to address all or part of the storm water quality standards for the project through payment of a compensation fee as provided by rules adopted pursuant to this subsection.

This section may not be construed to limit a municipality's authority under home rule to adopt ordinances containing stricter standards than those contained in this section.

§ 423. Discharge of waste from watercraft

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from watercraft, as defined in Title 12, section 7791, subsection 14, and including houseboats, into inland waters of this State, or on the ice thereof, or on the banks thereof in such a manner that the same may fall or be washed into such waters, or in such manner that the drainage therefrom may flow into such waters.

Any watercraft, as defined in Title 12, section 7791, subsection 14, including houseboats, operated upon the inland waters of this State and having a permanently installed sanitary waste disposal system shall have securely affixed to the interior discharge opening of such sanitary waste disposal system a holding tank or suitable container for holding sanitary waste material so as to prevent its discharge or drainage into the inland waters of the State.

§ 423-A. Discharge of waste from motor vehicles

No person, firm, corporation or other legal entity may discharge, spill or permit to be discharged sewage, garbage or other pollutants from motor vehicles or motor vehicle trailers into the inland or coastal waters, or on the ice of the inland or coastal waters, or onto the land in such a manner that the sewage, garbage or other pollutants may fall or be washed into these waters, or in such manner that the drainage from the discharge may flow into these waters. A person who violates the provisions of this section commits a civil violation subject to the provisions of section 349, subsection 2.

§ 423-B. Watercraft sewage pump-out facilities at marinas

By June 1, 1990, marinas serving coastal waters shall provide or provide through contractual agreements facilities to remove sanitary waste from the holding tanks of watercraft. For purposes of this section, the term "marina" means any commercial facility that provides supplies and services and has the capacity to provide slip space or mooring for 18 or more vessels which exceed 24 feet in length.

§ 423-C. Registered owner's liability for vehicle illegally discharging waste

A person who is a registered owner of a vehicle at the time that vehicle is involved in a violation of section 423-A commits a civil violation subject to the provisions of section 349, subsection 2, except as provided in subsection 4. For purposes of this section, "registered owner" includes a person issued a dealer or transporter registration plate.

1. Report violation; investigation. A person who observes a violation of section 423-A may report the violation to a police officer. If a report is made, the person shall report the time and the location of the violation and the registration plate number and a description of the vehicle involved. The officer shall initiate an investigation of the reported violation and, if possible, contact the registered owner of the motor vehicle involved and request that the registered owner supply information identifying the operator.

2. Summons. The investigating officer may cause the registered owner of the vehicle to be served with a summons for a violation of this section.

3. Registered owner not operator. Except as provided in subsection 4, it is not a defense to a violation of this section that a registered owner was not operating the vehicle at the time of the violation.

4. Defenses. The following are defenses to a violation of this section.

A. If a person other than the owner is convicted of operating the vehicle at the time of the violation in violation of section 423-A, the registered owner may not be found in violation of this section.

B. If the registered owner is a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee and the lessor provides the investigating officer with a copy of the lease agreement containing the information required by Title 29-A, section 254, the lessee and not the lessor may be charged under this section.

C. If the vehicle is operated using a dealer or transporter registration plate and at the time of the violation the vehicle was operated by a person other than the dealer or transporter and if the dealer or transporter provides the investigating officer with the name and address of the person who had control over the vehicle at the time of the violation, that person and not the dealer or transporter may be charged under this section.

D. If a report that the vehicle was stolen is given to a law enforcement officer or agency before the violation occurs or within a reasonable time after the violation occurs, the registered owner may not be charged under this section.

§ 424. Voluntary water quality monitors

The Commissioner of Environmental Protection may appoint voluntary water quality monitors to serve at the will and pleasure of the commissioner.

Such monitors are authorized to take water samples and tests of the waters of this State at such times and at such places and in such manner as the commissioner shall direct and to forward such water samples and test results to the commissioner for analysis.

The commissioner is authorized to provide such monitors with such sampling materials and equipment as he deems necessary, provided that such equipment and materials shall at all times remain the property of the State and shall be immediately returned to the commissioner upon his direction.

Such monitors shall not be construed to be employees of this State for any purpose.

The commissioner or his representative shall conduct schools to instruct said monitors in the methods and techniques of water sample taking and issue to said monitors an identification card or certificate showing their appointment and training.

Article 3

ENFORCEMENT

§ 451. Enforcement generally

After adoption of any classification by the Legislature for surface waters or tidal flats or sections thereof, it is unlawful for any person, firm, corporation, municipality, association, partnership, quasi-municipal body, state agency or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, in such manner as will, after reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere, lower the quality of those waters below the minimum requirements of such classifications, or where mixing zones have been established by the department, so lower the quality of those waters outside such zones, notwithstanding any exemptions or licenses which may have been granted or issued under sections 413 to 414-B.

The department may establish a mixing zone for any discharge at the time of application for a waste discharge license. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with section 345-A, the department may establish by order a mixing zone with respect to any discharge for which a license has been issued pursuant to section 414 or for which an exemption has been granted by virtue of section 413, subsection 2.

The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of pollutants with the receiving waters before the receiving waters below or surrounding a discharge will be tested for classification violations. In determining the extent of any mixing zone to be established under this section, the department may require from the applicant testimony concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate; the uses of the waterways in the vicinity of the discharge, and such other and further evidence as in the department's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof varies in order to take into account seasonal, climatic, tidal and natural variations in the size and flow of, and the nature and rate of, discharges to the waterway.

Where no mixing zones have been established by the department, it is unlawful for any person, corporation, municipality or other legal entity to dispose of any pollutants, either alone or in conjunction with another or others, into any classified surface waters, tidal flats or sections thereof, in such manner as will, after reasonable opportunity for dilution, diffusion, mixture or heat transfer to the atmosphere, lower the quality of any significant segment of those waters, tidal flats or sections thereof, affected by such discharge, below the minimum requirements of such classification, and notwithstanding any licenses which may have been granted or issued under sections 413 to 414-B.

1. Time schedule. [Repealed. Laws 1983, c. 566, § 25]

2. Revocation, modification or suspension of licenses. [Laws 1977, c. 300, §26]

§ 451-A. Time schedule variances

1. Power to grant variances. The department may grant a variance from any statutory water pollution abatement requirement, pursuant to section 414-A, subsection 1, paragraph D, to any

municipality or quasi-municipal entity, hereinafter called the "municipality," upon application by it. The department may grant a variance only upon a finding that:

A. Federal funds for the construction of municipal waste water treatment facilities are not available for the project;

B. The municipality has demonstrated that it has completed preliminary plans acceptable to the department for the treatment of municipal wastes and for construction of that portion of the municipal sewage system intended to be served by the planned municipal treatment plant when that plant first begins operations; and

C. Beginning on October 1, 1976, the municipality shall collect, from each discharger into its sewage system and each discharger not connected to the sewage system that has signed an approved agreement with the municipality pursuant to subsection 2, a fee sufficient to equal their proportionate share of the actual current cost of operating the sewage system for which preliminary plans have been completed and approved pursuant to paragraph B. Actual current costs include but are not limited to preliminary plans, final design plans, site acquisition, legal fees, interest fees, sewer system maintenance and rehabilitation and other administrative costs. A municipality may provide, when permitted under the federal construction grant program, that in lieu of such annual fees paid by dischargers, the municipality may apportion an appropriate amount from general revenues to cover that share of fees to be paid by dischargers.

The funds collected or apportioned pursuant to this paragraph and interest collected thereon must be invested and expended pursuant to Title 30-A, subpart 9.

Any funds paid by a discharger or discharger not connected to the sewage system pursuant to this paragraph may be credited to the account of the discharger if the municipality is subsequently reimbursed by the federal construction grant program. The credit arrangement must be determined by agreement between the municipality and the discharger.

Variances are issued for a term certain not to exceed 3 years, and may be renewed, except that no variance may run longer than the time specified for completion of the municipal waste treatment facility. Notwithstanding the provisions of this subsection, no variance issued under this section may extend beyond July 1, 1988. Upon notice of the availability of federal funds, the municipality shall present to the department for approval an implementation schedule for designing, constructing and placing the waste collection and treatment facilities in operation.

Variances may be conditioned upon reasonable and necessary terms relating to appropriate interim measures to be taken by the municipality to maintain or improve water quality.

1-A. Time schedule for salt and sand-salt storage program. An owner or operator of a salt or sand-salt storage area is not in violation of any groundwater classification or reclassification adopted on or after January 1, 1980, with respect to discharges to the groundwater from those facilities, if the owner or operator has completed all steps required to be completed by the schedules set forth in this subchapter. The commissioner shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection. A municipality or county site classified as Priority 4 or Priority 5 as of April 1, 2000, which was registered pursuant to section 413 prior to October 15, 1997, may not be in violation of any groundwater classification with respect to discharges to the groundwater from those facilities.

A. Preliminary plans and engineers' estimates must be completed and submitted to the Department of Transportation by the following dates:

(1) For Priority 1 and 2 projects, the latest of the following dates:

(a) One year from a designation under section 411;

(b) One year from notice of availability of a state grant, if eligible; or

(c) January 1996.

(2) For municipal, state and county Priority 3 projects, the later of the following dates:

(a) One year from notice of availability of a state grant, if eligible; or

(b) January 2003.

(3) For other Priority 3 project, the later of the following dates:

(a) One year from a designation under section 411; or

(b) January 1997.

D. For municipal and county sites only, review of final plans with the Department of Transportation must be completed within 12 months of the dates established in paragraph A for each priority category.

E. Construction must be completed and the facility in operation within 24 months of the dates established in paragraph A for each priority category.

In no case may violations of the lowest groundwater classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may be allowed for more than 3 years from the date of an offer of a state grant for the construction of those facilities.

The department may not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the schedule and the state grant is not available.

2. Exemptions. Any person, other than a municipality, maintaining a discharge subject to the requirements of section 413, 414 and 414-A shall be exempt from the requirements of section 414-A, subsection 1, paragraph D, Effluent Limitations and Best Practicable Treatment, if, by July 1, 1976 or on the commencement of a licensed discharge, whichever occurs later, such discharger presents to the Department of Environmental Protection and receives approval of a contract agreeing to connect to the existing or planned municipal sewage system immediately upon completion of construction and commencement of operation of such treatment plant. Such contract must insure that, in the case of a new discharge, such new discharge will not cause serious water quality problems, including but not limited to downgrading the receiving waters so as to make them unsuitable for currently existing uses. For the purpose of this section, a "new discharge" is a discharge which commences or a discharge which changes characteristics or increases licensed volume by more than 10% on or after the effective date of this Act.

3. Failure to comply with agreement. Failure to comply with any of the terms of an agreement approved pursuant to subsection 2 shall immediately render such agreement null and void and

discharges included in such an agreement shall immediately cease or shall only discharge in accordance with the standards of best practicable treatment specified in section 414-A, subsection 1, paragraph D, and all other requirements of sections 414 and 414-A.

4. Pretreatment systems. Where a discharger otherwise exempted from constructing treatment facilities pursuant to this section will be required to pretreat effluents before discharge into the municipal system pursuant to any requirement of state or federal law, the pretreatment system shall be installed upon commencement of the discharge.

5. Fees. Municipalities and quasi-municipal entities shall assess and collect the fees to be charged pursuant to this section in accordance with the provisions of chapter 11, and Title 30-A, chapters 161 and 213.

6. Power to grant variances to owners of private dwellings. [Repealed. Laws 1983, c. 566, §28]

7. Power to grant variances to owners of a single family dwelling. [Repealed 1987, c. 180, §3; c. 192, §15]

§ 452. Forms filed; right of entry; furnishing information

Persons, firms, corporations, quasi-municipal corporations, municipalities, state agencies and other legal entities shall file with the commissioner information relative to their present method of collection, disposal, composition and volume of all wastes discharged by them into any waters of the State, in a manner and on forms prescribed by the commissioner, within 30 days of receipt of those forms.

Article 4-A

WATER CLASSIFICATION PROGRAM

§ 464. Classification of Maine waters

The waters of the State shall be classified in accordance with this article.

1. Findings; objectives; purpose. The Legislature finds that the proper management of the State's water resources is of great public interest and concern to the State in promoting the general welfare; in preventing disease; in promoting health; in providing habitat for fish, shellfish and wildlife; as a source of recreational opportunity; and as a resource for commerce and industry.

The Legislature declares that it is the State's objective to restore and maintain the chemical, physical and biological integrity of the State's waters and to preserve certain pristine state waters. The Legislature further declares that in order to achieve this objective the State's goals are:

A. That the discharge of pollutants into the waters of the State be eliminated where appropriate;

B. That no pollutants be discharged into any waters of the State without first being given the degree of treatment necessary to allow those waters to attain their classification; and

C. That water quality be sufficient to provide for the protection and propagation of fish, shellfish and wildlife and provide for recreation in and on the water.

The Legislature intends by passage of this article to establish a water quality classification system which will allow the State to manage its surface waters so as to protect the quality of those waters and, where water quality standards are not being achieved, to enhance water quality. This classification system shall be based on water quality standards which designate the uses and related characteristics of those uses for each class of water and which also establish water quality criteria necessary to protect those uses and related characteristics. The Legislature further intends by passage of this article to assign to each of the State's surface water bodies the water quality classification which shall designate the minimum level of quality which the Legislature intends for the body of water. This designation is intended to direct the State's management of that water body in order to achieve at least that minimum level of water quality.

2. Procedures for reclassification. Reclassification of state waters shall be governed by the following provisions.

A. Upon petition by any person or on its own motion, the board may initiate, following public notice, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water classification.

B. The board shall hold public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input.

C. The board may recommend changes in classification it deems necessary to the Legislature.

D. The Legislature shall have sole authority to make any changes in the classification of the waters of the State.

2-A. Removal of designated uses; creation of subcategories of designated uses. Removal of designated uses and creation of subcategories of designated uses are governed by the provisions of this subsection and 40 Code of Federal Regulations, Part 131, as amended.

A. The board must conduct a use attainability analysis:

(1) Prior to proposing to the Legislature a designated use of a specific water body that does not include the uses specified in the Federal Water Pollution Control Act, Public Law 92-500, Section 101(a)(2), as amended; or

(2) Prior to proposing to the Legislature the removal of a designated use or the adoption of a subcategory of such a designated use that requires less stringent criteria.

B. The board may not recommend to the Legislature the removal of a designated use or the establishment of a subcategory of the use, if:

(1) It is an existing use as defined in section 464, subsection 4, paragraph F, subparagraph (1), unless another designated use is adopted requiring more stringent criteria;

(2) The use can be attained by implementing effluent limits required under the Federal Water Pollution Control Act, Public Law 92-500, Sections 301(b) and 306, as amended and by implementing cost-effective and reasonable best management practices for nonpoint source control;

(3) The water body in question is currently attaining the designated use; or

(4) Adoption of the recommendation allows the introduction of a new discharge or the expansion of an existing discharge into the water body in question that is not attaining the designated use.

C. The board may adopt any recommendation under this subsection only after holding a public hearing in the affected area or adjacent to the affected area. Conduct of the public hearing and the board's subsequent decision are governed by Title 5, chapter 375, subchapter IV.

D. A finding by the board that attainment of a designated use is not feasible must be supported by a demonstration that the conditions of 40 Code of Federal Regulations 131.10(g) are met.

E. If the board adopts a proposal to enact a designated use under paragraph A, subparagraph (1) or to remove a designated use or adopt a subcategory of a designated use under paragraph A, subparagraph (2), it shall forward that proposal to the joint standing committee of the Legislature having jurisdiction over natural resources matters at the next regular session of the Legislature. The board may not forward any other recommendation to the Legislature under this subsection. The Legislature has sole authority to make changes in the designated uses of the waters of the State, including the creation of a subcategory of a designated use.

F. For the purposes of this subsection, "designated use" means the use specified in water quality standards for each water body or segment under sections 465 to 465-C and sections 467 to 470 whether or not that use is being attained. A designated use includes its associated habitat characteristic under sections 465 to 465-C.

2-B. Temporary removal of designated uses; use attainability analysis and creation of subcategory of uses for combined sewer overflows. When designated uses are not being met as a result of combined sewer overflow discharges, the board may, consistent with this subsection and 40

Code of Federal Regulations, Part 131, temporarily remove designated uses that are not existing uses and create a temporary combined sewer overflow subcategory referred to as a CSO subcategory. Notwithstanding this subsection, it remains the goal of the State to fully maintain and restore water quality and eliminate or control combined sewer overflows as soon as practicable.

A. The board may create temporary CSO subcategories in classes B, C and SB and SC waters only when, due to the age, condition and design of an existing sewer system, technical or financial limitations prevent the timely attainment of all designated uses. In a CSO subcategory, uses are suspended only in the smallest area possible, for the shortest duration practicable and include only those designated uses and areas determined by the board to have the least potential for public benefit.

B. Notwithstanding subsections 2 and 2-A, CSO subcategories may be created by the board upon application by a municipality or quasi-municipality having licensed combined sewer overflow discharges, if the following standards are met.

(1) The applicant submits to the department for approval, with or without conditions, a study and plan, including an implementation schedule, for combined sewer overflow abatement, referred to as the CSO plan. In order for the board to create a CSO subcategory, the CSO plan must:

(a) Place high priority on abatement of combined sewer overflows that affect waters having the greatest potential for public use or benefit and plan to relocate any remaining discharges to areas where minimal impacts or losses of uses would occur; and

(b) Provide for the implementation as soon as practical of technology-based control methods to achieve best practicable treatment or ensure that cost-effective best management practices are being implemented.

(2) The board finds that attainment of a designated use is not feasible and such determination must be supported by demonstration that the conditions of 40 Code of Federal Regulations, Part 131.10(g) are met.

(3) The board finds that the uses to be affected are not existing uses as defined in subsection 4, paragraph F, subparagraph (1).

(4) The board finds that discharges from combined sewer overflows are not affecting uses that, in the board's judgment, constitute high value or important resources. In determining if a resource is high value or important the board shall consider its economic, recreational and ecological significance, the likelihood that removal of a combined sewer overflow will lead to utilization of that resource and the effects of other discharges or conditions on that resource.

C. Prior to creating any CSO subcategory, the board shall adopt rules regarding required studies, best practicable treatment, abatement options and related issues for combined sewer overflows. CSO subcategories may be created only after completion of the following.

(1) Either during or following development of combined sewer abatement plans, licensees shall conduct public hearings in the area that would be affected by a CSO subcategory. Notices and records of hearings must be kept and included as part of an application made to the board.

(2) Combined sewer overflow abatement plans must be submitted to the department for technical review and approval.

(3) Licensees proposing CSO subcategories shall submit formal applications to the board. Information in the application must include: description of the areas and uses to be affected, the time and duration of effects, comments received at public hearings, a description of continuing efforts to abate impacts and proposals for periodic review and update of abatement plans.

(4) The board shall provide public notice of applications for CSO subcategories and solicit public comments. The board shall also consult with agencies, public officials and other persons identified as having interest in the area to be affected. Based on the results of public hearings held by the applicant, the comments received and the nature of the application, the board may hold a public hearing.

(5) The board may approve, approve with conditions or deny applications for CSO subcategories. In cases when a water body is affected by combined sewer overflows from more than one licensee, the board shall, to the maximum extent possible, consider regional impacts and seek to establish common goals and uses for those waters.

(6) In a manner prescribed by the board, applicants receiving approval of CSO subcategories shall provide notice to the public in the area affected, describing the limitations on use of the water body.

D. Upon creation of a CSO subcategory and removal of a designated use, the board may temporarily suspend or modify water quality criteria associated with that use as appropriate, but only to the extent and duration that those criteria are affected by the licensee for whom the assignment is made. Action by the board under this subsection does not relieve other discharge sources from any requirement to provide necessary treatment or best management practices or to comply with water quality criteria.

E. Either independently or in conjunction with the requirements of subsection 3 and upon renewal of individual waste discharge licenses, the department shall periodically review all CSO subcategories. Reviews of CSO subcategories must take into consideration water quality criteria and uses, combined sewer overflow abatement technology, monitoring data, financial information and regulatory requirements affecting CSO subcategories.

Upon petition by the department or any person or on its own motion, the board may, at its discretion, and following notice and opportunity for hearing, revise or revoke a CSO subcategory when it finds any change in the conditions under which the existing designation was made. The failure to comply with the measures specified in an approved combined sewer overflow abatement plan is cause for revocation of a CSO subcategory.

3. Reports to the Legislature. The department shall periodically report to the Legislature as governed by the following provisions.

A. The commissioner shall submit to the first regular session of each Legislature a report on the quality of the State's waters which describes existing water quality, identifies waters that are not attaining their classification and states what measures are necessary for the attainment of the standards of their classification.

B. The board shall, from time to time, but at least once every 3 years, hold public hearings for the purpose of reviewing the water quality classification system and related standards and, as appropriate, recommending changes in the standards to the Legislature.

C. The commissioner shall report annually to each regular session of the Legislature on the status of licensed discharges.

D. [Repealed. Laws 1989, c. 890, Pt. A, §40 (aff); Pt. B, §55 (rp).]

4. General provisions. The classification system for surface waters established by this article shall be subject to the following provisions.

A. Notwithstanding section 414-A, the department may not issue a water discharge license for any of the following discharges:

(1) Direct discharge of pollutants to waters having a drainage area of less than 10 square miles, except that discharges into these waters that were licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist;

(2) New direct discharge of domestic pollutants to tributaries of Class-GPA waters;

(3) Any discharge into a tributary of GPA waters that by itself or in combination with other activities causes water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters;

(4) Discharge of pollutants to waters of the State that imparts color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class;

(5) Discharge of pollutants to any water of the State that violates sections 465, 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and marine waters to fall outside of the 7.0 to 8.5 range; and

(6) New discharges of domestic pollutants to the surface waters of the State that are not conveyed and treated in municipal or quasi-municipal sewage facilities. For the purposes of this subparagraph, "new discharge" means any overboard discharge that was not licensed as of June 1, 1987, except those discharges that were in continuous existence for the 12 months preceding June 1, 1987, as demonstrated by the applicant to the department with clear and convincing evidence. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take place as a new discharge of domestic pollutants.

(7) After the Administrator of the United States Environmental Protection Agency ceases issuing permits for discharges of pollutants to waters of this State pursuant to the administrator's authority under the Federal Water Pollution Control Act, Section 402(c)(1), any proposed license to which the administrator has formally objected under 40 Code of Federal Regulations, Section 123.44, as amended, or any license that would not provide for compliance with applicable requirements of that Act or regulations adopted thereunder;

(8) Discharges for which the imposition of conditions can not ensure compliance with applicable water quality requirements of this State or another state;

(9) Discharges that would, in the judgment of the Secretary of the United States Army, substantially impair anchorage or navigation;

(10) Discharges that would be inconsistent with a plan or plan amendment approved under the Federal Water Pollution Control Act, Section 208(b); and

(11) Discharges that would cause unreasonable degradation of marine waters or when insufficient information exists to make a reasonable judgment whether the discharge would cause unreasonable degradation of marine waters.

Notwithstanding subparagraph (6), the department may issue a wastewater discharge license allowing for an increase in the volume or quantity of discharges of domestic pollutants from any university, college or school administrative unit sewage facility, as long as the university, college or school administrative unit has a wastewater discharge license valid on the effective date of this paragraph and the increase in discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11) or other applicable laws.

B. All surface waters of the State shall be free of settled substances which alter the physical or chemical nature of bottom material and of floating substances, except as naturally occur, which impair the characteristics and designated uses ascribed to their class.

C. Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465-A and 465-B, those waters shall not be considered to be failing to attain their classification because of those natural conditions.

D. Except as otherwise provided in this paragraph, for the purpose of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of the river or stream must be computed using the minimum 7-day low flow which can be expected to occur with a frequency of once in 10 years. The department may use a different flow rate only for those toxic substances regulated under section 420. To use a different flow rate, the department must find that the flow rate is consistent with the risk being addressed.

E. The waters contained in excavations approved by the department for wastewater treatment purposes are unclassified waters.

F. The antidegradation policy of the State is governed by the following provisions.

(1) Existing in-stream water uses and the level of water quality necessary to protect those existing uses must be maintained and protected. Existing in-stream water uses are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard for classification of the particular water body.

Determinations of what constitutes an existing in-stream water use on a particular water body must be made on a case-by-case basis by the department. In making its determination of uses to be protected and maintained, the department shall consider designated uses for that water body and:

(a) Aquatic, estuarine and marine life present in the water body;

(b) Wildlife that utilize the water body;

(c) Habitat, including significant wetlands, within a water body supporting existing populations of wildlife or aquatic, estuarine or marine life, or plant life that is maintained by the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use for purposes of this antidegradation policy; and

(e) Any other evidence that, for divisions (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for division (d), demonstrates its historical or social significance.

(1-A) The department may only issue a waste discharge license pursuant to section 414-A, or approve a water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, when the department finds that:

(a) The existing in-stream use involves use of the water body by a population of plant life, wildlife, or aquatic, estuarine or marine life, or as aquatic, estuarine, marine, wildlife, or plant habitat, and the applicant has demonstrated that the proposed activity would not have a significant impact on the existing use. For purpose of this division, significant impact means:

(i) Impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

(b) The existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of an existing level of water quality and the applicant has demonstrated that the proposed activity would not result in significant degradation of the existing use.

The department shall determine what constitutes a population of a particular species based upon the degree of geographic and reproductive isolation from other individuals of the same species.

If the department fails to find that the conditions of this subparagraph are met, water quality certification, pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, is denied.

(2) Where high quality waters of the State constitute an outstanding national resource, that water quality must be maintained and protected. For purposes of this paragraph, the following waters are considered outstanding national resources: those water bodies in national and state parks and wildlife refuges; public reserved lands; and those water bodies classified as Class AA and SA waters pursuant to section 465, subsection 1; section 465-B, subsection 1; and listed under sections 467, 468 and 469.

(3) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the Federal Water Pollution Control Act, Section 401, Public Law 92-500, as amended, if the standards of classification of the water body and the requirements of this paragraph are met. The department may issue a discharge license or approve water quality certification for a project affecting a water body in which the standards of classification are not met if the project does not cause or contribute to the failure of the water body to meet the standards of classification.

(4) When the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality must be maintained and protected. The board shall recommend to the Legislature that water be reclassified in the next higher classification.

(5) The department may only issue a discharge license pursuant to section 414-A or approve water quality certification pursuant to the United States Clean Water Act, Section 401, Public Law 92-500, as amended, which would result in lowering the existing quality of any water body after making a finding, following opportunity for public participation, that the action is necessary to achieve important economic or social benefits to the State and when the action is in conformance with subparagraph (3). That finding must be made following procedures established by rule of the board.

G. [Laws 1989, c. 442, §5]

H. A hydropower project, as defined by section 632, constructed after the effective date of this paragraph may cause some change to the habitat and aquatic life of the project's impoundment and the waters immediately downstream of and measurably affected by the project, so long as the habitat and aquatic life criteria of those waters' classification under sections 465, 465-A, 467, and 468 are met. This paragraph does not constitute any change in the criteria for habitat and aquatic life under sections 465 and 465-A.

I. [TEXT REPEALED 01/01/99] Temperature limits for certain facilities are governed by the following provisions.

5. Rulemaking. In accordance with the Maine Administrative Procedure Act, the board shall promulgate rules necessary to implement the water quality classification system established by this article. In promulgating rules, the board shall solicit and consider, in addition to any other materials, information on the economic and environmental impact of those rules.

Rules shall be promulgated by January 1, 1987, and as necessary thereafter, and shall include, but are not limited to, sampling and analytical methods, protocols and procedures for satisfying the water quality criteria, including evaluation of the impact of any discharge on the resident biological community.

Rules adopted pursuant to this subsection shall become effective upon adoption. Rules adopted pursuant to this subsection shall be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources for review during the next regular session of the Legislature following adoption. This committee may submit legislation it deems necessary to clarify legislative intent regarding rules adopted pursuant to this subsection. If the committee takes no action, the rules shall continue in effect.

6. Implementation of biological water quality criteria. The implementation of water quality criteria pertaining to the protection of the resident biological community shall be governed by the provisions of this subsection.

A. At any time during the term of a valid wastewater discharge license that was issued prior to the effective date of this article, the board may modify that license in accordance with section 341-D, subsection 3 if the discharger is not in compliance with the water quality criteria pertaining to the protection of the resident biological community. When a discharge license is modified under this subsection, the board shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

B. When a discharge license is issued after the effective date of this article and before the effective date of the rules adopted pursuant to subsection 5, the department shall establish a reasonable schedule to bring the discharge into compliance with the water quality criteria pertaining to the protection of the resident biological community.

C. A discharger seeking a new discharge license following the effective date of the rules adopted under subsection 5 shall comply with the water quality criteria of this article.

7. Interdepartmental coordination. The commissioner, the Commissioner of Marine Resources and the Commissioner of Human Services shall jointly:

A. Make available accurate and consistent information on the requirements of this section, section 411-A and section 414-A, subsection 1-B; and

B. Certify wastewater treatment and disposal technologies which can be used to replace overboard discharges.

8. Development of group systems. Subject to the provisions of section 414-A, subsection 1-B, the commissioner shall coordinate the development and implementation of wastewater treatment and disposal systems serving more than one residence or commercial establishment when individual replacement systems are not feasible.

9. Existing hydropower impoundments managed as great ponds; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and licensing of modifications under section 636, the hydropower project located on the water body referenced in section 467, subsection 7, paragraph C, subparagraph (1), division (b-1) is deemed to have met the habitat characteristics and aquatic life criteria in the existing impoundments if:

A. The project is in existence on the effective date of this subsection;

B. The project creates an impoundment that remains classified under section 465-A after June 30, 1992;

C. The project creates an impoundment that is subject to water level fluctuations that have an effect on the habitat and aquatic life in the littoral zone so that the habitat and aquatic life differ significantly from that found in an unimpounded great pond; and

D. The existing impounded waters are able to support all species of fish indigenous to those waters and the structure and function of the resident biological community in the impounded waters is maintained.

All other hydropower projects with impoundments in existence on the effective date of this subsection that remain classified under section 465-A after June 30, 1992 and that do not attain the habitat and aquatic life criteria of that section must, at a minimum, satisfy the aquatic life criteria contained in section 465, subsection 4, paragraph C.

When the actual water quality of the impounded waters attain any more stringent characteristic or criteria of those waters' classification under section 465-A that water quality must be maintained and protected.

10. Existing hydropower impoundments managed under riverine classifications; habitat and aquatic life criteria. For the purposes of water quality certification under the Federal Water Pollution Control Act, Public Law 92-500, section 401, as amended, and the licensing of modifications under section 636, hydropower projects in existence on the effective date of this subsection, the impoundments of which are classified under section 465, are subject to the provisions of this subsection in recognition of some changes to aquatic life and habitat that have occurred due to the existing impoundments of these projects.

A. Except as provided in paragraphs B and D, the habitat characteristics and aquatic life criteria of Classes A and B are deemed to be met in the existing impoundments classified A or B of those projects if:

(1) The impounded waters achieve the aquatic life criteria of section 465, subsection 4, paragraph C.

B. The habitat characteristics and aquatic life criteria of Classes A and B are not deemed to be met in the existing impoundments of those projects referred to in paragraph A if:

(1) Reasonable changes can be implemented that do not significantly affect existing energy generation capability; and

(2) Those changes would result in improvement in the habitat and aquatic life of the impounded waters.

If the conditions described in subparagraphs (1) and (2) occur, those changes must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

C. If the conditions described in paragraph B, subparagraphs (1) and (2) occur at a project in existence on the effective date of this subsection, the impoundment of which is classified C, the changes described in paragraph B, subparagraphs (1) and (2) must be implemented and the resulting improvement in habitat and aquatic life must be achieved and maintained.

D. When the actual water quality of waters affected by this subsection attains any more stringent characteristic or criteria of those waters' classification under sections 465, 467 and 468, that water quality must be maintained and protected.

11. Downstream stretches affected by existing hydropower projects. Hydropower projects in existence on the effective date of this subsection that are located on water bodies referenced in section 467, subsection 4, paragraph A, subparagraphs (1) and (7), and section 467, subsection 12, paragraph A, subparagraphs (7) and (9) are subject to the provisions of this subsection.

For the purposes of water quality certification of hydropower projects under the Federal Water Pollution Control Act, Public Law 92-500, Section 401, as amended, and licensing of modifications to these hydropower projects under section 636, the habitat characteristics and aquatic life criteria of Class A are deemed to be met in the waters immediately downstream of and measurably affected by the projects listed in this subsection if the criteria contained in section 465, subsection 4, paragraph C are met.

§ 465. Standards for classification of fresh surface waters

The department shall have 4 standards for the classification of fresh surface waters which are not classified as great ponds.

1. Class AA waters. Class AA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic or recreational importance.

A. Class AA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, fishing, recreation in and on the water and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as free flowing and natural.

B. The aquatic life, dissolved oxygen and bacteria content of Class AA waters shall be as naturally occurs.

C. There shall be no direct discharge of pollutants to Class AA waters, except for storm water discharges that are in compliance with state and local requirements.

2. Class A waters. Class A shall be the 2nd highest classification.

A. Class A waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section

403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher. The aquatic life and bacteria content of Class A waters shall be as naturally occurs.

C. Direct discharges to these waters licensed after January 1, 1986, are permitted only if, in addition to satisfying all the requirements of this article, the discharged effluent will be equal to or better than the existing water quality of the receiving waters. Prior to issuing a discharge license, the department shall require the applicant to objectively demonstrate to the department's satisfaction that the discharge is necessary and that there are no other reasonable alternatives available. Discharges into waters of this classification licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist. There may be no deposits of any material on the banks of these waters in any manner so that transfer of pollutants into the waters is likely.

3. Class B waters. Class B shall be the 3rd highest classification.

A. Class B waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as habitat for fish and other aquatic life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class B waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher, except that for the period from October 1st to May 14th, in order to ensure spawning and egg incubation of indigenous fish species, the 7-day mean dissolved oxygen concentration shall not be less than 9.5 parts per million and the 1-day minimum dissolved oxygen concentration shall not be less than 8.0 parts per million in identified fish spawning areas. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters may not exceed a geometric mean of 64 per 100 milliliters or an instantaneous level of 427 per 100 milliliters.

C. Discharges to Class B waters shall not cause adverse impact to aquatic life in that the receiving waters shall be of sufficient quality to support all aquatic species indigenous to the receiving water without detrimental changes in the resident biological community.

4. Class C waters. Class C shall be the 4th highest classification.

A. Class C waters shall be of such quality that they are suitable for the designated uses of drinking water supply after treatment; fishing; recreation in and on the water; industrial process and cooling water supply; hydroelectric power generation, except as prohibited under Title 12, section 403; and navigation; and as a habitat for fish and other aquatic life.

B. The dissolved oxygen content of Class C water may be not less than 5 parts per million or 60% of saturation, whichever is higher, except that in identified salmonid spawning areas where water quality is sufficient to ensure spawning, egg incubation and survival of early life stages, that water quality sufficient for these purposes must be maintained. Between May 15th and September 30th, the number of Escherichia coli bacteria of human origin in these waters may not exceed a geometric mean of 142 per 100 milliliters or an instantaneous level of 949 per 100 milliliters. The board shall promulgate rules governing the procedure for designation of spawning areas. Those rules must include provision for periodic review of designated spawning

areas and consultation with affected persons prior to designation of a stretch of water as a spawning area.

C. Discharges to Class C waters may cause some changes to aquatic life, provided that the receiving waters shall be of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

§ 465-A. Standards for classification of lakes and ponds

The department shall have one standard for the classification of great ponds and natural lakes and ponds less than 10 acres in size. Impoundments of rivers that are defined as great ponds pursuant to section 480-B are classified as GPA or as specifically provided in sections 467 and 468.

1. Class GPA waters. Class GPA shall be the sole classification of great ponds and natural ponds and lakes less than 10 acres in size.

A. Class GPA waters shall be of such quality that they are suitable for the designated uses of drinking water after disinfection, recreation in and on the water, fishing, industrial process and cooling water supply, hydroelectric power generation and navigation and as habitat for fish and other aquatic life. The habitat shall be characterized as natural.

B. Class GPA waters shall be described by their trophic state based on measures of the chlorophyll "a" content, Secchi disk transparency, total phosphorus content and other appropriate criteria. Class GPA waters shall have a stable or decreasing trophic state, subject only to natural fluctuations and shall be free of culturally induced algal blooms which impair their use and enjoyment. The number of Escherichia coli bacteria of human origin in these waters may not exceed a geometric mean of 29 per 100 milliliters or an instantaneous level of 194 per 100 milliliters.

C. There may be no new direct discharge of pollutants into Class GPA waters. Aquatic pesticide treatments or chemical treatments for the purpose of restoring water quality approved by the department and storm water discharges that are in compliance with state and local requirements are exempt from the no discharge provision. Discharges into these waters licensed prior to January 1, 1986, are allowed to continue only until practical alternatives exist. No materials may be placed on or removed from the shores or banks of a Class GPA water body in such a manner that materials may fall or be washed into the water or that contaminated drainage therefrom may flow or leach into those waters, except as permitted pursuant to section 480-C. No change of land use in the watershed of a Class GPA water body may, by itself or in combination with other activities, cause water quality degradation that would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters.

§ 465-B. Standards for classification of estuarine and marine waters

The department shall have 3 standards for the classification of estuarine and marine waters.

1. Class SA waters. Class SA shall be the highest classification and shall be applied to waters which are outstanding natural resources and which should be preserved because of their ecological, social, scenic, economic or recreational importance.

A. Class SA waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as free-flowing and natural.

B. The estuarine and marine life, dissolved oxygen and bacteria content of Class SA waters shall be as naturally occurs.

C. There may be no direct discharge of pollutants to Class SA waters, except storm water discharges that are in compliance with state and local requirements.

2. Class SB waters. Class SB waters shall be the 2nd highest classification.

A. Class SB waters shall be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hyroelectric power generation and navigation and as habitat for fish and other estuarine and marine life. The habitat shall be characterized as unimpaired.

B. The dissolved oxygen content of Class SB waters shall be not less than 85% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 8 per 100 milliliters or an instantaneous level of 54 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, United State Department of Food and Drug Administration.

C. Discharges to Class SB waters shall not cause adverse impact to estuarine and marine life in that the receiving waters shall be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There shall be no new discharge to Class SB waters which would cause closure of open shellfish areas by the Department of Marine Resources.

3. Class SC waters. Class SC waters shall be the 3rd highest classification.

A. Class SC waters shall be of such quality that they are suitable for recreation in and on the water, fishing, aquaculture, propagation and restricted harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation and navigation and as a habitat for fish and other estuarine and marine life.

B. The dissolved oxygen content of Class SC waters shall be not less than 70% of saturation. Between May 15th and September 30th, the numbers of enterococcus bacteria of human origin in these waters may not exceed a geometric mean of 14 per 100 milliliters or an instantaneous level of 94 per 100 milliliters. The numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in restricted shellfish harvesting areas may not exceed the criteria recommended under the National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas, United States Food and Drug Administration.

C. Discharges to Class SC waters may cause some changes to estuarine and marine life provided that the receiving waters are of sufficient quality to support all species of fish indigenous to the receiving waters and maintain the structure and function of the resident biological community.

§ 465-C. Standards of classification of ground water

The department shall have 2 standards for the classification of ground water.

1. Class GW-A. Class GW-A shall be the highest classification and shall be of such quality that it can be used for public water supplies. These waters shall be free of radioactive matter or any

matter that imparts color, turbidity, taste or odor which would impair usage of these waters, other than that occurring from natural phenomena.

2. Class GW-B. Class GW-B, the 2nd highest classification, shall be suitable for all usages other than public water supplies.

§ 466. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Aquatic life. "Aquatic life" means any plants or animals which live at least part of their life cycle in fresh water.

2. As naturally occurs. "As naturally occurs" means conditions with essentially the same physical, chemical and biological characteristics as found in situations with similar habitats free of measurable effects of human activity.

2-A. Color pollution unit. "Color pollution unit" means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of "Standard Methods for Examination of Water and Wastewater," adopted by the United States Environmental Protection Agency, or an equivalent measure.

2-B. Combined sewer overflow. "Combined sewer overflow" means a discharge of excess wastewater from a municipal or quasi-municipal sewerage system that conveys both sanitary wastes and storm water in a single pipe system and that is in direct response to a storm event or snowmelt. Combined sewer overflow discharges do not include dry weather discharges that occur as a result of nonstorm events or are caused solely by groundwater infiltration.

3. Community function. "Community function" means mechanisms of uptake, storage and transfer of life-sustaining materials available to a biological community which determines the efficiency of use and the amount of export of the materials from the community.

4. Community structure. "Community structure" means the organization of a biological community based on numbers of individuals within different taxonomic groups and the proportion each taxonomic group represents of the total community.

5. Direct discharge. "Direct discharge" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

6. Domestic pollutants. "Domestic pollutants" means any material, including, without limitation, sanitary wastes, waste water from household activities or waste waters with similar chemical characteristics, which are generated at residential or commercial locations.

7. Estuarine and marine life. "Estuarine and marine life" means any plants or animals which live at least part of their life cycle in salt water.

8. Indigenous. "Indigenous" means supported in a reach of water or known to have been supported according to historical records compiled by State and Federal agencies or published scientific literature.

9. Natural. "Natural" means living in, or as if in, a state of nature not measurably affected by human activity.

9-A. Overboard discharge. "Overboard discharge" means discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.

9-B. Quasi-municipal. "Quasi-municipal" means any form of ownership and management by a governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public waste water treatment services, but which is not a state governmental unit.

9-C. Pounds per ton as unit of measure. "Pounds per ton" means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measured in tons of actual production of unbleached wood pulp as measured on an air dried basis.

10. Resident biological community. "Resident biological community" means aquatic life expected to exist in a habitat which is free from the influence of the discharge of any pollutant. This shall be established by accepted biomonitoring techniques.

11. Unimpaired. "Unimpaired" means without a diminished capacity to support aquatic life.

11-A. Use attainability analysis. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use in a water body. The assessment may include consideration of physical, chemical, biological and economic factors.

12. **Without detrimental changes in the resident biological community.** "Without detrimental changes in the resident biological community" means no significant loss of species or excessive dominance by any species or group of species attributable to human activity.